

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

This Settlement and Release of Claims Agreement ("Agreement") is entered into on September 27, 2004, by and among each of the Duke Parties, OMOI, each of the California Parties, each of the Other Claimant Parties, each of the Local Governmental Parties and each of the Class Action Parties. Each of the Duke Parties, OMOI, the California Parties, the Other Claimant Parties, the Local Governmental Parties and the Class Action Parties is a "Party", and collectively they are "Parties" to this Agreement. Unless otherwise expressly provided for herein, defined terms used herein shall have the meaning set forth for such term in Article I of this Agreement.

RECITALS

A. *Whereas*, proceedings and investigations relating to California and Western wholesale electricity markets during the relevant period commenced with a complaint filed by SDG&E on August 2, 2000 under Section 206 of the Federal Power Act ("FPA"). In response to the complaint, FERC instituted a proceeding under Docket No. EL00-95-000, established a refund effective date of October 2, 2000, directed FERC Staff to focus on the California and western markets in its investigation, and established Docket No. EL00-98-000;

B. *Whereas*, numerous entities intervened and became parties to the FERC Refund Proceedings in Docket Nos. EL00-95-000 and EL00-98-000, including, the California Attorney General, the CPUC, CEOB, PG&E and SCE. These parties intervened on behalf of themselves and their retail end-user electricity customers, in their respective representative capacities;

C. *Whereas*, government agencies, commissions and utilities in other western states also intervened to make claims and to represent their own interests and the interests of electricity purchasers and consumers;

D. *Whereas*, in a series of orders and reports in the FERC Proceedings, the FERC made findings and issued orders regarding the California and western wholesale electricity markets;

E. *Whereas*, most if not all of the prior FERC orders in the FERC Proceedings have been the subject of petitions for appellate review. The FERC has also concluded a number of dockets relating to the western electricity markets, and numerous petitions for appellate review have been filed as to those orders as well. In addition, the FERC is concluding the process of determining refunds for the ISO and PX market participants, and further petitions for appellate review are anticipated.

F. *Whereas*, various of the Parties are involved in complex regulatory proceedings before the FERC and in related appellate proceedings regarding numerous issues arising from events in California energy markets during the years 2000 and 2001;

G. *Whereas*, various of the Parties are involved in litigation before different courts and in related appellate proceedings regarding numerous issues arising from events in California energy markets; and

H. *Whereas*, the Parties have determined that it is preferable to settle the disputes addressed herein rather than continue to litigate;

Now therefore, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I. DEFINITIONS

The following capitalized terms, when used in this Agreement, including the attachments hereto, shall have the meanings specified in this Article I.

1.1 "Additional Settling Participant" means a Participant that has elected to join this settlement in accordance with Article VIII.

1.2 "Agreement" means this Settlement and Release of Claims Agreement.

1.3 "Allocation Agreement" shall have the meaning set forth in Section 5.8.

1.4 "Allocation Matrix" means the matrix, attached hereto as Exhibit A, setting forth the various allocation percentages with respect to certain Duke Refunds and charges that are applicable to each Participant pursuant to this Agreement.

1.5 "Business Day" has the same meaning as provided in California Civil Code Section 9.

1.6 "California Attorney General" means the People of the State of California, ex rel. Bill Lockyer, Attorney General.

1.7 "California Class" means the plaintiff class representatives in *Gordon v. Reliant Energy, Inc., et al.*, Case No. GIC 758487 (San Diego Super. Ct., Nov. 27, 2000); *Hendricks v. Dynegy Power Marketing, Inc., et al.*, Case No. GIC 758565 (San Diego Super. Ct., Nov. 29, 2000); *Sweetwater Authority, et al. v. Dynegy, Inc. et al.*, Case No. GIC 760743 (San Diego Super. Ct., Jan. 16, 2001); *Pier 23 Restaurant and Oscar's Photo Lab v. PG&E Energy Trading, et al.*, Case No. 308120 (San Fran. Super. Ct., Jan. 24, 2001); and *Bustamante v. Dynegy, Inc., et al.*, Case No. BC 249705 (Los Angeles Super. Ct., May 2, 2001), previously coordinated as Wholesale Electricity Antitrust Cases I & II (collectively, the "Wholesale Electricity Antitrust Cases"), on behalf of a settlement class composed of all persons and entities in the State of California who indirectly purchased electric power since July 1, 1998, including all persons and entities within the class definition pled in the Master Complaint filed in Wholesale Electricity Antitrust Cases.

1.8 **"California Parties"** means collectively PG&E, SCE, SDG&E, California Attorney General, CERS, CPUC and CEOB. Each individually may be referred to as a *"California Party."*

1.9 **"California Class Action Effective Date"** shall be that date on which the order certifying the California Class for settlement purposes, and the final judgment of approval of the Settlement as between Duke and the California Class, is final and no longer subject to any further appeal.

1.10 **"California Litigation Escrow"** shall mean the escrow identified in Section 4.1.2.3 and established pursuant to Section 4.1.2.5.

1.11 **"California Utilities"** means collectively PG&E, SCE and SDG&E.

1.12 **"Cash Payments"** mean the payments set forth in Section 4.1.2.

1.13 **"CERS"** means the California Department of Water Resources acting solely under the authority and powers created by AB1-X, codified in Sections 80000 through 80270 thereof, and not under its powers and responsibilities with respect to the State Water Resources Development System.

1.14 **"CERS Escrow"** shall have the meaning set forth in Section 5.7.

1.15 **"CEOB"** means the California Electricity Oversight Board.

1.16 **"Class Action Effective Date"** means collectively the dates referred to in Sections 1.9 and 1.36.

1.17 **"Class Action Parties"** means collectively the California Class and the Egger Class.

1.18 **"Class Counsel"** means, with respect to the California Class, the law firms of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, and Lieff, Cabraser, Heimann & Bernstein, LLP, and, with respect to the Egger Class, the law firm of Stanley, Mandel, & Iola, L.L.P.

1.19 **"Cooperating Parties"** shall mean the Parties with which Duke is obligated to cooperate in Section 4.2.5.

1.20 **"Court Order"** shall mean the pertinent court order in the Wholesale Electricity Antitrust Cases or in Egger granting final approval of this Agreement under Article XI.

1.21 **"CPUC"** means the California Public Utilities Commission.

1.22 **"CT485 Claim"** means the Statement of Claim Duke served on the ISO on March 17, 2004, concerning the rescission of payments for energy and ancillary services and the imposition of ISO settlements charges or penalties.

1.23 "CT485 Credit" means a \$2,000,000 credit, reflected in the calculation of the amount of Duke monetary consideration provided under Section 4.1, in consideration of Duke's release and full and final resolution of its CT485 Claim, pursuant to Section 4.1.1.8.

1.24 "Deemed Distribution" means an amount credited to a Participant, identified on Exhibit C, pursuant to Section 5.5.2 as an offset to amounts owed by the Participant to the PX or ISO.

1.25 "Deemed Distribution Participant" means the Participants listed on Exhibit C.

1.26 "Distributable Rerun Shortfall" means the Rerun Shortfall less the Offsetting Mitigation, as each is calculated in Section 4.1.3, provided that in no event shall the Distributable Rerun Shortfall exceed \$5,000,000.

1.27 "Duke-OMOI Settlement Agreement" means the agreement between Duke and OMOI in FERC Docket Nos. IN03-10-000 and PA02-2-000, as approved in FERC's December 19, 2003 Order, 105 FERC 61,307.

1.28 "Duke Parties" means collectively: Duke Energy Corporation, a North Carolina corporation; Duke Capital LLC, Duke Energy Americas, LLC; Duke Energy North America, LLC; Duke Energy Merchants, LLC; Duke Energy Trading and Marketing, L.L.C. ("DETM"); Duke Energy Morro Bay LLC; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC; and Duke Energy South Bay, LLC. "Duke Parties" also includes the following entities, each of which Duke Energy Corporation warrants: (i) is a direct or indirect subsidiary of Duke Capital LLC, and (ii) is not owned by any non-Duke entities: DETMI Management, Inc., a Colorado corporation; DE Power Generating, LLC; Duke Energy California, LLC; Duke Energy Generation Services, LLC; Duke Energy Fossil-Hydro, LLC; Duke Energy Fossil-Hydro California, Inc., a Delaware corporation; Catawba River Investments II, LLC; and DE Power Generating Holdings, LLC (collectively or individually referred to as "Duke," "Duke Party," or "Duke Parties"). Each Duke Party that is a limited liability company is organized as a Delaware limited liability company.

1.29 "Duke-PG&E Agreement" means an agreement between Duke and PG&E, effective March 7, 2001, and a subsequent agreement between Duke and PG&E dated July 12, 2004.

1.30 "Duke Receivables" means all of Duke's rights and claims to payment by or from the PX and/or the ISO for sales of energy and ancillary services into the California power markets during the period January 1, 2000 through June 20, 2001, (including the amount of interest on unpaid amounts of Duke Receivables, the right to which attaches to the Duke Receivables, but not including receivables owed to or amounts owed by Duke which are accounted for separately under Duke's RMR Contracts).

1.31 "Duke Refunds" shall have the meaning set forth in Section 5.2.1.

1.32 **"Duke Refund Escrow"** shall mean the escrow identified in Section 4.1.2.1 and established pursuant to Section 4.1.2.5.

1.33 **"Duke Settlement Proceeds"** shall mean the consideration provided pursuant to Section 4.1.

1.34 **"Egger"** means the court proceeding in *Egger et al., v. Dynegy, Inc.*, et al., Case No. 03 CV 1060 R POR (S.D. Cal.).

1.35 **"Egger Class"** means the plaintiffs in Egger, on behalf of a settlement class composed of all persons and entities residing in Oregon, Washington, Utah and Idaho who indirectly purchased electric power since July 1, 1998, including all persons and entities within the class definition pled in Egger.

1.36 **"Egger Class Action Effective Date"** shall be that date on which the order certifying the Egger Class for settlement purposes, and the final judgment of approval of the Settlement as between Duke and the Egger Class, is final and no longer subject to any further appeal.

1.37 **"EL00-95 Proceeding"** means the FERC refund proceeding conducted in Docket Nos. EL00-95-000 *et al.* and EL00-98-000 *et al.*

1.38 **"Emissions Offset"** shall mean the claim for recovery of emissions costs incurred by the Duke generating units during the Refund Period as adopted by FERC. *San Diego Gas & Elec. Co. v. Sellers et al.*, 102 FERC ¶ 61,317 at P 5(BB) (March 26, 2003).

1.39 **"Execution Date"** means the date this Agreement has been executed by all Parties, except the Local Governmental Parties, hereto.

1.40 **"FERC"** means the Federal Energy Regulatory Commission.

1.41 **"FERC Allowances Determination"** means the FERC order or orders directing the payment of Fuel Cost Allowances or Emissions Offsets, or both, in the EL00-95 Proceeding, regardless of whether such order is subject to requests for rehearing or appeals.

1.42 **"FERC Interest Determination"** means the FERC order or orders directing the payment of interest to be paid on receivables and refunds based on the current ISO and PX settlement reruns and refund calculations, regardless of whether such order is subject to requests for rehearing or appeals, provided that such order or orders have not been stayed pending such rehearing or appeal.

1.43 **"FERC Interest Rate"** shall have the meaning set forth in 18 C.F.R. § 35.19a(a)(2)(iii) or any successor thereto.

1.44 **"FERC Proceedings"** means the EL00-95 Proceeding, and proceedings in Docket Nos. PA02-2, IN03-10, EL01-10, and the Physical Withholding Investigation,

insofar as these proceedings concern the Duke Parties' sales in the ISO and/or PX markets and/or sales to CERS from January 1, 2000 through June 20, 2001.

1.45 **"FERC Receivables Determination"** means the FERC order or orders, following the Preparatory Rerun, establishing the amount of the unpaid Duke Receivables, regardless of whether such order is subject to requests for rehearing or appeals, provided that such order or orders have not been stayed pending such rehearing or appeal.

1.46 **"FERC Refund Determination"** means the FERC order or orders establishing the amount of Duke Refunds owed to Non-Settling Participants, as defined in Section 5.2.1, regardless of whether such order(s) is subject to requests for rehearing or appeals, provided that such order or orders have not been stayed pending such rehearing or appeal.

1.47 **"FERC Settlement Order"** means the FERC order approving this Agreement in accordance with Section 10.1, regardless of whether such order is subject to requests for rehearing or appeals.

1.48 **"Fuel Cost Allowance"** means the claim for recovery of fuel costs incurred by generating units during the Refund Period made pursuant to FERC orders in the EL00-95 Proceeding.

1.49 **"Interest Credit"** shall have the meaning set forth in Section 4.1.1.2.

1.50 **"Inverse Condemnation Cases"** shall mean the California Judicial Council Coordination Proceeding No. 4203.

1.51 **"ISO"** means the California Independent System Operator Corporation, a California public benefit corporation.

1.52 **"January PX Transactions"** shall have the meaning provided in Section 5.11.6.2.

1.53 **"Local Government Effective Date"** means, as to each Local Governmental Party, the date that it obtains board or council approval of the settlement (if necessary) and executes this Agreement, or December 31, 2004, whichever is earlier.

1.54 **"Local Governmental Parties"** means the City and County of San Francisco; the City of Oakland; the County of Santa Clara; the County of Contra Costa; Valley Center Municipal Water District; Padre Dam Municipal Water District; Ramona Municipal Water District; Helix Water District; Vista Irrigation District; Yuima Municipal Water District; Fallbrook Public Utility District; Borrego Water District; Metropolitan Transit Development Board; San Diego Trolley, Inc.; San Diego Transit Corporation; and Sweetwater Authority.

1.55 **"Lockyer v. FERC"** shall mean the proceeding described in Section 7.8.

1.56 **"Lockyer v. FERC Remand"** means proceedings conducted by FERC pursuant to the September 9, 2004 appeals court decision in *Lockyer v. FERC* to the extent such proceedings concern refunds applicable to Duke based upon the establishment of just and reasonable rates arising from its sales in the ISO and PX markets during the period from January 1, 2000 through June 20, 2001.

1.57 **"Mitigation"** means the obligation to pay or account for refunds, adjustments, allowances or charges, other than those in the Preparatory Rerun, as determined in the EL00-95 Proceeding.

1.58 **"Net Payers"** shall have the meaning set forth in Section 5.2.3.3. Net Payers are identified on Exhibit B.

1.59 **"Net Refund Recipients"** means those Participants, other than Deemed Distribution Participants, that elect to participate in the settlement pursuant to Section 8.1 and that are owed net refunds after consideration of amounts that the particular Participant may itself owe to the ISO and/or PX market in the form of refunds (unadjusted for Fuel Cost Allowances, Emissions Offsets, or charges for same) or accounts payable for the Refund Period, as calculated in Exhibits CPX 51 and ISO 30 in the evidentiary hearing in the EL00-95 Proceeding.

1.60 **"Non-Settling Participants"** means Participants, other than Duke and the California Parties, that do not elect to participate in this settlement pursuant to Section 8.1.

1.61 **"Notice Orders"** shall have the meaning set forth in Section 11.1.

1.62 **"Offsetting Mitigation"** shall be the amount calculated as set forth in Section 4.1.3.2.

1.63 **"OMOI"** means FERC's Office of Market Oversight and Investigations.

1.64 **"OOM"** means out of market and refers, for purposes of this Agreement, to short-term bilateral purchases by CERS.

1.65 **"Other Claimant Parties"** means the San Diego District Attorney's Office; and Attorneys General of the States of Washington and Oregon in their capacities as chief law enforcement officers of their respective states, and to the greatest extent permitted by their respective laws.

1.66 **"Paid Duke Receivables"** means the sum of all distributions of Duke Receivables (including any amounts designated as interest in such distributions) that have been or are made by the California ISO or PX to Duke on or after July 1, 2004, and prior to the transfer to the California Parties of the Duke Receivables pursuant to Section 4.1.1.6.

1.67 **"Participants"** means those entities that were ISO Scheduling Coordinators or PX Participants or otherwise directly sold energy to or purchased energy from the ISO and PX during part or all of the Settlement Period.

1.68 **"Party" or "Parties"** shall have the meaning set forth in the Preamble.

1.69 **"PG&E"** means Pacific Gas and Electric Company, a California corporation.

1.70 **"Physical Withholding Investigation"** means FERC's undocketed fact-finding investigation regarding alleged withholding by entities that controlled generation selling into the California markets.

1.71 **"Post-January 17, 2001 Period"** means the period from January 18, 2001 through June 20, 2001.

1.72 **"Preparatory Rerun"** means the ISO settlements rerun process for the period October 2, 2000 through June 20, 2001, conducted pursuant to FERC Docket No. ER03-746, before and without regard to the calculation of any refunds or mitigation.

1.73 **"Pre-January 18, 2001 Period"** means the period from October 2, 2000 through January 17, 2001.

1.74 **"Pre-October Period"** means the period from May 1, 2000 through October 1, 2000.

1.75 **"PX"** means the California Power Exchange Corporation, a California public benefit corporation.

1.76 **"PX Settlement Clearing Account"** means the account maintained and held by the PX containing funds relating to the PX and the ISO markets that have not yet been distributed. FERC has held that this account is subject to its exclusive jurisdiction.

5.11.2. 1.77 **"Receivables Excess"** shall have the meaning set forth in Section

4.1.1.3. 1.78 **"Receivables Offset"** shall have the meaning set forth in Section

5.11.2. 1.79 **"Receivables Shortfall"** shall have the meaning set forth in Section

1.80 **"Refund Excess"** shall have the meaning set forth in Section 5.11.3.

2001. 1.81 **"Refund Period"** means the period October 2, 2000 through June 20,

1.82 **"Refund Shortfall"** shall have the meaning set forth in Section 5.11.3.

1.83 **"Required Approvals"** means the regulatory approvals set forth in Section 10.1.

1.84 **"Rerun Shortfall"** shall have the meaning set forth in Section 4.1.3.1.

1.85 **"Rerun Shortfall Escrow"** means the escrow established pursuant to Section 4.1.3.

1.86 **"RMR Contract"** means any Reliability Must Run contract that a Duke Party entered with the ISO and the associated tariff relating to the dispatch and payment of Reliability Must Run generation.

1.87 **"SCE"** means Southern California Edison Company, a California corporation.

1.88 **"SDG&E"** means San Diego Gas & Electric Company, a California corporation.

1.89 **"Settlement Effective Date"** means the later of: (i) the date FERC issues the FERC Settlement Order; or (ii) the date the CPUC approves the settlement in its entirety, either by entering into the settlement as a Party or, if required as to SCE, by issuing an order approving the settlement in its entirety that has become final and is no longer subject to appeal.

1.90 **"Settling Participants"** means the California Parties and Additional Settling Participants.

1.91 **"Settlement Period"** means the inclusive period from January 1, 2000 through June 20, 2001.

1.92 **"Stated Receivables"** is the amount set forth in Section 4.1.1.4.

1.93 **"Unsettled Duke Refund Amounts"** shall have the meaning set forth in Section 6.1.4.

1.94 **"Unsettled Participant Refund Amount"** shall have the meaning set forth in Section 6.1.4.1.

1.95 **"Wholesale Electricity Antitrust Cases"** shall mean that civil litigation referred to in Section 1.7, and People v. Dynegy Power Marketing, Inc., Case No. 318189, which is a coordinated action in the Wholesale Electricity Antitrust Cases I and II referenced in Section 1.7.

ARTICLE II.
CONDITIONS TO EFFECTIVENESS; TERMINATION

2.1 Effect of Settlement Effective Date.

2.1.1 Condition Precedent. It is a condition precedent to (i) the obligation of a Party to make payments, assign receivables, assume liabilities or release claims hereunder and (ii) the effectiveness of all releases and the withdrawals of claims and defenses specified hereunder, that the Settlement Effective Date has occurred.

2.1.2 Binding Obligation. Except as provided in Section 2.1.1, this Agreement shall be a binding obligation of each Party, except the Local Governmental Parties, immediately upon the Execution Date.

2.1.3 Additional Settling Participant. Each Additional Settling Participant shall be bound to this Agreement as of the time set forth in Section 8.1.

2.1.4 Local Governmental Parties. Each Local Governmental Party shall be bound to this Agreement upon the Local Government Effective Date.

2.2 Termination Other Than as to Class Action Parties. Except as provided in Section 2.3, this Agreement shall (i) terminate on the date of the issuance by FERC of a final, non-appealable order rejecting this Agreement in whole or in material part (including any refusal on the part of FERC to issue an order directing the PX to release funds from the PX Settlement Clearing Account as required in this Agreement) and (ii) in such event, be null and void and of no further effect, with all rights, duties and obligations of the Parties thereafter restored as if this Agreement had never been executed; provided, however, that the Parties may, in the sole discretion of each Party, agree to attempt to modify this Agreement in a manner that would resolve the grounds for which the Required Approvals were denied, while maintaining the economic and financial terms of this Agreement. Nothing herein shall be construed as obligating any Party to appeal an order from FERC that fails to approve this settlement.

2.3 Termination as Between Duke and the Class Action Parties. The reciprocal obligations in this Agreement as between Duke and each of the Class Action Parties shall terminate on the entry of an order of the pertinent court denying preliminary or final approval of this Agreement as to any such Class Action Party. Any such termination as between Duke and the Class Action Parties has no impact on this Agreement as between Duke and the California Parties, Other Claimant Parties, and Additional Settling Participants.

ARTICLE III. SETTLEMENT AND ACKNOWLEDGEMENT

3.1 Settlement.

3.1.1 Settlement of All Claims. In return for the consideration specified elsewhere in this Agreement and the full performance by the Parties of their respective obligations hereunder, and subject to obtaining the Required Approvals, all claims against the Duke Parties for damages, refunds, disgorgement of profits, or other monetary or non-monetary remedies, in the FERC Proceedings, the *Lockyer v. FERC* Remand, the Wholesale Electricity Antitrust Cases and in Egger, shall be deemed settled or resolved, as set forth more particularly in Article VII; provided that the EL00-95 Proceeding, FERC Docket No. EL01-10, and the *Lockyer v. FERC* Remand shall not be deemed settled as to Non-Settling Participants.

3.1.2 Exclusions. Notwithstanding anything to the contrary in this Agreement, the Parties shall be deemed to retain any and all claims and defenses they have or may claim to have against Non-Settling Participants and against members of the California or Egger Classes who request exclusion from this settlement.

3.2 Acknowledgement of Compromise. The Parties acknowledge and agree that the payments called for in this Agreement, along with the covenants and obligations set forth in this Agreement, settle and compromise the Settling Participants' and Class Action Parties' claims as set forth in the releases contained within this Agreement.

3.3 Disclaimers. The Parties acknowledge and agree that the allocation of the Duke Settlement Proceeds represents a financial settlement and does not, nor is it intended to, reflect any factual concessions or admissions of liability by any of the Parties with respect to any time period or alleged activity to which such proceeds are being allocated under this Agreement.

ARTICLE IV. CONSIDERATION

4.1 Duke Monetary Consideration. In consideration of the respective covenants herein, Duke shall provide the monetary consideration set forth hereafter in this Section 4.1, consisting of the assigned Duke Receivables, plus Cash Payments, plus up to \$5,000,000 in the event of a Rerun Shortfall, plus consideration specified in Section 11.7 (collectively, the "*Duke Settlement Proceeds*").

4.1.1 Duke Receivables.

4.1.1.1 Receivables on ISO/PX Books. The Parties acknowledge that, as of and including June 30, 2004, the unpaid amount of Duke Receivables, excluding interest, before and without regard to the Preparatory Rerun or

Mitigation, but assuming a crediting back to Duke of the Interest Credit described in Section 4.1.1.2, was stated in the collective accounts of the ISO and PX to be \$305,290,229. This \$305,290,229 is after all payments received by Duke from the ISO or PX as of June 30, 2004 are taken into account.

4.1.1.2 Interest Credit. The Parties acknowledge that, as of June 30, 2004, Duke had paid the ISO interest of \$1,026,136 on amounts that Duke owed the ISO for energy for the period January 2001-May 2001, which interest shall be credited back to Duke as part of the Duke Receivables for purposes of this Agreement ("*Interest Credit*"). FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the ISO and PX to recognize and implement the Interest Credit.

4.1.1.3 Duke-PG&E Agreement and Receivables Offset. Pursuant to the Duke-PG&E Agreement, Duke has agreed to an offset (the "*Receivables Offset*") reducing, as of March 7, 2001, the Duke Receivables from the ISO, before and without regard to the Preparatory Rerun and Mitigation, by \$165,114,222.39. The Parties agree that the Receivables Offset will in turn be reflected as an offset of \$165,114,222.39 as of March 7, 2001, in the amounts owed by PG&E to the PX and in turn owed by the PX to the ISO. For purposes of calculation of interest by the ISO and PX, these offsetting amounts will be treated as if they were payments made on March 7, 2001, so that no interest will accrue to Duke, or be owed by PG&E, on the \$165,114,222.39 for the period on and after March 7, 2001. Interest relating to the Receivables Offset for the period prior to March 7, 2001 and interest on any Duke Receivables in excess of the Receivables Offset shall be governed by FERC's Interest Determination. FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the ISO and PX to recognize and implement the Receivables Offset.

4.1.1.4 Stated Receivables, after Interest Credit and Receivables Offset. As of June 30, 2004, the amount of Duke Receivables stated in the accounts of the ISO and the PX, before and without regard to the Preparatory Rerun and Mitigation, excluding interest, but with adjustment for the Interest Credit and the Receivables Offset, is \$140,176,006.61. This amount shall be referred to herein as the "*Stated Receivables*." Stated Receivables do not include receivables owed to or amounts owed by Duke which are accounted for separately under Duke's RMR Contracts.

4.1.1.5 Duke Representations. Duke warrants and represents, subject to its limited obligation to true-up Rerun Shortfalls, as described in Section 4.1.3, that the \$140,176,006.61 of Stated Receivables described in Section 4.1.1.4 was reflected on the ISO and PX accounts as they stood before and without regard to the Preparatory Rerun and Mitigation, without regard to any interest owing to or by Duke (except for giving effect to the Interest Credit) and after taking account of the Receivables Offset. Duke further warrants and represents, not limited by its obligations in Section 4.1.3, that, as of the date of its entry into this Agreement, it is not aware of any material issue that is likely to arise in the Preparatory Rerun that is unique to Duke, as opposed to issues that are likely to be common to Participants generally, and that is expected to have a material adverse effect on the amount of Duke Receivables. For purposes of this representation, a material issue is an issue (or collection of issues) with a

likely adverse impact of \$2.1 million or more on the actual amount of the Duke Receivables. Further, for purposes of this representation, issues that are likely to be common to Participants generally include any market, penalty or charge type adjustment which is administered across the ISO market as a whole, even if the Duke Parties are the only Participants affected for a particular time interval, or is administered across all resources, including RMR generating units, regarding energy or ancillary service deviation or other type of correction, even though a Duke Parties' resource may be the only adjustment during a particular time interval. Duke represents and warrants, not limited by its obligations in Section 4.1.3, that, except with regard to the Receivables Offset pursuant to the Duke-PG&E Agreement, as of the date of its entry into this Agreement, it has not, and, as of the Settlement Effective Date, it shall not have, pledged, hypothecated, encumbered, sold, transferred or otherwise assigned, to any third party, whether voluntarily or involuntarily or by way of setoff or offset, in whole or in part, any of the Duke Receivables.

4.1.1.6 Assignment of Duke Receivables. As of the Settlement Effective Date (i) the Duke Parties shall, and do hereby, assign, sell, transfer, convey and deliver to the California Parties, free and clear of all claims, liens, and encumbrances, and (ii) the California Parties shall, and do hereby, assume, purchase, acquire and accept, without recourse to the Duke Parties, all of the Duke Parties' right, title and interest in and to the Duke Receivables and all claims, rights of action and defenses otherwise available to the Duke Parties arising from or relating to the Duke Receivables, as they may be adjusted at any time after execution of the Term Sheet, whether in the Preparatory Rerun, in the FERC Proceedings or through any other ISO or PX settlements adjustment permitted under applicable ISO or PX tariffs. The foregoing term "without recourse" shall not, however, limit or be construed as limiting in any way any rights the California Parties have with respect to the Duke Parties pursuant to the express written provisions, representations and warranties of this Agreement. Each of the Duke Parties hereby irrevocably authorizes the California Parties, and their respective attorneys, agents, and employees, at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (A) describe the foregoing transfer, and (B) provide any other information required by Part 5 of Article 9 of the Uniform Commercial Code of the jurisdiction in which such filing is made for the sufficiency or filing office acceptance of such financing statements or amendments, including whether such Duke Party is an organization, its type of organization and the charter or organization identification number issued to such Duke Party. Further, the Parties acknowledge and agree that: (1) the assignment of Duke Receivables includes the right to interest on such Duke Receivables pursuant to the FERC Interest Determination; (2) the assignment of the Duke Receivables pursuant to this Agreement does not include claims and defenses that arise as a result of the various contractual relationships among the Duke Parties themselves; (3) such claims and defenses shall not affect, hinder or impair the Duke Receivables assigned to the California Parties hereunder; and (4) the Duke Receivables shall be used by the California Parties for the payment of refunds and other payments to Settling Participants as provided for under this Agreement.

4.1.1.7 Scope of Assigned Receivables. For purposes of Section 4.1.1.6, except as otherwise expressly provided herein, the Duke Receivables shall include any and all positive or negative allocations of charges or credits that may be

made by the ISO or PX that cause an adjustment up or down in the Duke Receivables as a result of or on account of ISO and PX transactions by or with respect to Duke in the Settlement Period. To the extent that the ISO or PX is determined in any future proceeding or for any reason to owe any additional amounts to Duke or be owed any additional amounts by Duke for the Settlement Period, such amounts are assigned to or, subject to the limitations set forth in Sections 5.11 – 5.11.8, become the responsibility of the California Parties. However, charges or credits that pertain to Duke transactions in the ISO or PX during periods prior to January 1, 2000 or after June 20, 2001 are not Duke Receivables assigned to the California Parties, shall not in any way affect the Duke Receivables, and shall remain the responsibility of or accrue to the benefit of Duke. Duke will remain obligated for any PX wind-up expenses associated with PX work performed prior to the Settlement Effective Date, as may be determined in FERC Docket No. ER02-2234-000 *et al.* The California Parties will assume Duke's share, as may be determined in FERC Docket No. ER02-2234-000, of PX wind-up expenses associated with PX work performed after the Settlement Effective Date. FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the ISO and PX to recognize and implement the assignment of the Duke Receivables, as provided in Sections 4.1.1.6 and 4.1.1.7 and the treatment of PX wind-up expenses.

4.1.1.8 CT 485 Credit. In settlement of and in consideration of Duke's release and full and final resolution of its CT485 Claim, the amount of Duke monetary consideration provided under Section 4.1 fully reflects a \$2,000,000 reduction on account of resolution and dismissal of the CT485 Claim. FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the ISO and PX to dismiss the CT485 Claim and to recognize the CT485 Credit.

4.1.1.9 Access to Information. The California Parties prior to entering this Agreement were given access and authorization by the Duke Parties to review the PX and the ISO accounts receivable and Preparatory Rerun information relating to the Duke Receivables. The Duke Parties authorize the ISO and PX to provide to the California Parties on or after the Execution Date any additional information, materials, or data that would otherwise be available to the Duke Parties, and otherwise unavailable to the California Parties, and that are related to the Duke Parties' sales in the ISO and/or PX markets during the Settlement Period; *provided*, that except as otherwise provided by applicable law, each of the California Parties agree that it shall maintain such information in confidence and shall not disclose it to third parties (other than to (i) its employees, lenders, counsel, accountants or advisors who have a need to know such information for purposes of implementing this Agreement and who have agreed to keep such information confidential, or (ii) OMOI, who shall treat any such information so provided as privileged pursuant to 18 C.F.R. 388.112(c) and shall place such information in a non-public file).

4.1.2 Cash Payments. No later than ten (10) Business Days after the Settlement Effective Date, Duke shall pay the amounts set forth in Sections 4.1.2.1 through 4.1.2.4:

4.1.2.1 \$16,994,873 by wire transfer, from funds other than the Duke Receivables, into an interest bearing escrow account designated as the "Duke Refund Escrow"; and

4.1.2.2 By wire transfer from funds other than the Duke Receivables, into the Duke Refund Escrow, an amount equal to the Paid Duke Receivables, plus interest thereon at the FERC Interest Rate from and after the date of Duke's receipt of the distributions until payment into the Duke Refund Escrow pursuant to this Section 4.1.2.2; and

4.1.2.3 \$40,300,000 by wire transfer, from funds other than the Duke Receivables, into an interest bearing escrow account designated as the "California Litigation Escrow"; and

4.1.2.4 \$549,973 by wire transfer to such account as FERC Trial Staff may designate in settlement of claims in FERC Docket No. EL03-152-000 (as provided in the settlement between Duke and FERC Trial Staff), unless Duke has already done so pursuant to a Commission approved settlement in such Docket.

4.1.2.5 **Responsibility for Escrows.** The California Parties shall, no later than five (5) Business Days after the Settlement Effective Date, execute one or more escrow agreements with a reputable financial institution to establish and govern the Duke Refund Escrow and the California Litigation Escrow. The costs of maintaining and maintenance of the Duke Refund Escrow shall be the responsibility of the California Parties. The costs of maintaining and maintenance of the California Litigation Escrow shall be the responsibility of the California Parties. Duke consents to any combination of these escrows with other similar escrows being maintained by the California Parties for purposes of settlements with other parties in the FERC Refund Proceedings. In the event that both the Duke Refund Escrow and the California Litigation Escrow are not available to begin receiving funds ten (10) Business Days after the Settlement Effective Date, then all time periods provided in this Agreement for the payment of funds that include payments to or from the Duke Refund Escrow or the California Litigation Escrow shall be extended by the number of days between the tenth (10th) Business Day after the Settlement Effective Date and the date on which both the Duke Refund Escrow and the California Litigation Escrow are available to begin receiving funds.

4.1.2.6 **Application of OMOI Settlement.** The \$2,500,000 that Duke paid to FERC pursuant to the Duke-OMOI Settlement shall be treated as monetary consideration under this Agreement and shall be allocated as provided in Section 5.4, provided that the portion of this \$2,500,000 that is allocated to Settling Participants shall be transferred (without interest) from the account in which it is now held to the Duke Refund Escrow, and the portion of this \$2,500,000 that is allocated to Non-Settling Participants shall remain in the account in which it is now held. FERC's approval of this Agreement in the FERC Settlement Order shall constitute approval of the treatment and allocation of the \$2,500,000 Duke paid to FERC pursuant to the Duke-OMOI Settlement, as provided herein.

4.1.3 Rerun Shortfall. In addition to the Cash Payments specified in Section 4.1.2, and no later than ten (10) Business Days after the Settlement Effective Date, Duke shall pay \$5,000,000 into an interest bearing escrow account (the "*Rerun Shortfall Escrow*"), to ensure payment of its responsibility for the Distributable Rerun Shortfall as provided below in Sections 4.1.3.1 through 4.1.3.3. Duke shall be responsible for the establishment, costs of maintaining and maintenance of the Rerun Shortfall Escrow. Duke shall have no obligation to pay any other funds into the Rerun Shortfall Escrow or to cover in any way any Rerun Shortfall, other than as provided in Sections 4.1.3.1 through 4.1.3.3.

4.1.3.1 Definition of Rerun Shortfall. For purposes of this Agreement, the term "Rerun Shortfall" refers to the amount, if any, by which the Duke Receivables determined in the FERC Receivables Determination, as of the completion of the Preparatory Rerun, before and without regard to Mitigation or interest, as adjusted for the Interest Credit and the Receivables Offset, but with no adjustment for the CT485 Credit, is less than the Stated Receivables of \$140,176,006.61.

4.1.3.2 Offsetting Mitigation Calculation. For purposes of determining the Distributable Rerun Shortfall, and making distributions pursuant to Section 4.1.3.3, the Rerun Shortfall, determined under Section 4.1.3.1 shall be reduced by the "*Offsetting Mitigation*," as calculated pursuant to this Section 4.1.3.2. The amount of Offsetting Mitigation is the difference between (i) the amount of total Duke refunds that would be calculated in the EL00-95 Proceeding with Duke Receivables adjusted by the Preparatory Rerun adjustments and (ii) the amount of total Duke refunds that would be calculated in the EL00-95 Proceeding with Duke Receivables determined before and without regard to Preparatory Rerun adjustments. Upon conclusion of the Preparatory Rerun and the availability of Duke's pre-mitigation transaction database, with and without the Preparatory Rerun adjustments, Duke and the California Parties shall agree on use of a refund model with which to calculate the amount of the total Duke refunds that would be calculated in the EL00-95 Proceeding with and without Preparatory Rerun adjustments. If Duke and the California Parties do not agree on use of such a model or the premitigation transaction database is not available, FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the ISO to make the calculation of the Rerun Shortfall and Offsetting Mitigation, as prescribed herein, as part of its EL00-95 Proceeding compliance filings. Any dispute between Duke and the California Parties regarding the calculation of the amount of the Rerun Shortfall or Offsetting Mitigation which cannot be resolved through good faith negotiations shall be submitted to binding, nonreviewable arbitration, in which the ISO shall not be a party, before a single, neutral arbitrator selected from the national panel maintained by the CPR Institute for Dispute Resolution utilizing the CPR Rules for Non-Administered Arbitration in effect as of the Settlement Effective Date.

4.1.3.3 Distributions from Rerun Shortfall Escrow. Within ten (10) business days after the calculations of the Rerun Shortfall and Offsetting Mitigation are made pursuant to Section 4.1.3.2 any Duke Party or any California Party may initiate a dispute as to these calculations, to be conducted pursuant to Section 4.1.3.2. If no notice of such dispute is provided, or upon resolution of a noticed dispute, pursuant to Section 4.1.3.2, the existence and amount of any Rerun Shortfall, the Offsetting Mitigation, and the resulting Distributable Rerun Shortfall shall be fixed. The

Distributable Rerun Shortfall, which shall in no event exceed \$5,000,000, shall be deemed to have accrued interest at the interest rate earned by the Rerun Shortfall Escrow, from the date of establishment of the Rerun Shortfall Escrow. The amount of the Distributable Rerun Shortfall, plus accrued interest, shall be paid from the Rerun Shortfall Escrow, into the California Litigation Escrow, by wire transfer. Any additional funds in the Rerun Shortfall Escrow in excess of amounts to be paid into the California Litigation Escrow hereunder, including the accrued interest on such excess amount, shall be distributed to Duke.

4.2 Duke's Non-Monetary Consideration and Prospective Commitments.

4.2.1 Market Rules. Duke agrees to implement FERC's market behavior rules as established in FERC Docket No. EL01-118, and as may be amended from time to time. Duke agrees, as of the Settlement Effective Date, not to pursue a challenge, by means of objection, rehearing, appeal or otherwise, of market behavior rules adopted or implemented pursuant to FERC Docket No. EL01-118 (including the November 17, 2003 order, 105 FERC ¶ 61,218 (2003) and the May 19, 2004 order on rehearing, 107 FERC ¶ 61,175 (2004)). This undertaking shall not preclude Duke (i) from opposing any party's challenges or objections that seek to modify the above-referenced orders, (ii) from defending its behavior in specific enforcement actions or other FERC proceedings, or (iii) from intervening in future docketed proceedings to comment on how the market behavior rules should be interpreted or applied.

4.2.2 Must Offer Obligations. Duke will comply with applicable ISO tariff provisions concerning must-offer obligations unless and until such time that FERC approves the termination of such obligation(s), as applicable; provided, however, that all Parties are free to advocate changes in those tariff provisions. The obligations of this Section 4.2.2 shall not affect Duke's obligations under Section 4.2.6.

4.2.3 Independent Outage Audits. For a period of twenty-four (24) months following the Settlement Effective Date, Duke shall, at its expense, retain an independent consulting or engineering company to perform semi-annual audits of outages during the prior six (6) months at Duke's generating plants in California. The findings of each audit shall be provided directly by that independent company to OMOI and shall be provided simultaneously to Duke, without prior review by Duke. The purpose of such audits shall be to determine whether plant outages are for legitimate operating, maintenance or economic reasons under the circumstances relevant to each outage, and are of an appropriate duration under the circumstances relevant to each outage. The first such audit of a total of four (4) shall be submitted to OMOI no later than eight (8) months following the Settlement Effective Date and shall examine outages during the first six (6) months after the Settlement Effective Date. The audit reports shall be made available by Duke to other Parties, upon their request, for use exclusively in proceedings at FERC.

4.2.4 Cooperation with Settling Participants. Duke agrees to cooperate with the California Parties and Other Claimant Parties in pursuing claims against suppliers other than Duke in the FERC Proceedings, provided that such cooperation shall not obligate Duke to waive any privileges. As part of its ongoing cooperation obligations, Duke shall make witnesses available for interviews and

depositions by the California Parties and Other Claimant Parties at mutually convenient times and locations. The California Parties and Other Claimant Parties will seek information in a focused manner, and will work with Duke to streamline information and requests as appropriate. The witness interviews, depositions and all documents disclosed will be subject to the existing or future confidentiality agreements and protective orders between Duke and the California Parties and Other Claimant Parties and the confidentiality provisions of California Government Code Section 11180, *et seq.* Pursuant to its ongoing cooperation obligations, Duke will continue to produce relevant, non-privileged documents to the California Parties and Other Claimant Parties, as requested. OMOI shall be permitted to attend and ask questions at any such interview or deposition, and shall be provided with copies of any written information provided through such cooperative efforts.

4.2.5 Cooperation with Attorneys General, Local Governmental Parties and Class Parties. Duke shall continue to cooperate with the California, Oregon and Washington Attorneys General's investigations and litigation related to the California energy crisis, and with the Local Governmental Parties and Class Parties in Egger and in the Wholesale Electricity Antitrust Cases (collectively, the "*Cooperating Parties*"), *provided* that such cooperation shall not obligate Duke to waive any privileges. As part of its ongoing cooperation obligations, Duke shall make witnesses available for interviews and depositions by the Cooperating Parties at mutually convenient times and locations and to produce documents as requested. The Cooperating Parties will seek information in a focused manner, and will work with Duke to streamline information requests as appropriate. The witness interviews, depositions, and all documents disclosed pursuant to this Section 4.2.5 will be subject to the existing or future confidentiality agreements and protective orders between Duke and the Cooperating Parties and the confidentiality provisions of Calif. Gov. Code Section 11180, *et seq.* The documents produced by Duke to the Cooperating Parties under this Section 4.2.5 or pursuant to the Cooperating Parties' subpoenas can be used by the Cooperating Parties in litigation against third parties pursuant to a court approved protective order. The Cooperating Parties shall give reasonable notice to Duke of their intent to use such documents in litigation which notice shall specify the terms of the protective order under which they may be used. The Cooperating Parties will promptly notify Duke in writing when their investigations are closed. This provision for continuing cooperation by Duke shall extend to the conclusion of the Cooperating Parties' litigation and active investigation of California energy markets during the Settlement Period, and includes cooperation through any trials and appeals as necessary.

4.2.6 Bidding during Stage Alerts. Upon termination of the existing must-offer obligation, and continuing for one year or until December 31, 2006, whichever is later, Duke shall abide by a must-offer obligation to submit supplemental energy bids for all uncommitted, Available Operating Capacity, as defined in this Section 4.2.6, from its generation assets located in California into the ISO imbalance energy market for all hours for which the ISO has issued a 24-Hour Forecast or Alert Notice pursuant to its Operating Protocol E-508 (Sep. 8, 2003). If Duke fails to submit a supplemental energy bid for any portion of its Available Operating Generation for any interval, the unbid quantity will be deemed by the ISO to be bid at the greater of the Generating Unit's Proxy Price or Reference Price and inserted into the bid stack. "*Available Operating Capacity*" is defined, solely for the purpose of this Section 4.2.6,

as the unloaded and otherwise uncommitted capacity at the time a supplemental energy bid is submitted of a generating unit that is either on-line and synchronized or capable of being on-line and synchronized, calculated as the unit's maximum operating level (a) adjusted for legitimate operating or maintenance outages or reductions in capacity, (b) adjusted for any limitations on operation under applicable law, (c) adjusted for limitations under RMR agreements, (d) minus capacity committed to be scheduled under a bilateral agreement, (e) minus capacity subject to real-time control by unaffiliated third-parties, (f) minus capacity committed to provide Ancillary Services to the ISO either through the ISO's Ancillary Services market or through self provision by a Scheduling Coordinator, (g) minus capacity committed to self-provide station power, and (h) minus the capacity committed to deliver Energy or provide Operating Reserve to Native Load. Notwithstanding the foregoing, the obligation of Duke with respect to a particular generating unit under this section shall terminate automatically as of the retirement of the unit, the termination of the unit's Participating Generator Agreement, or the transfer of ownership and operational control of the unit to an unaffiliated entity. Duke shall be relieved of its obligations under this Section 4.2.6 during any period in which: (1) a Utility Distribution Company or Metered Subsystem, or their scheduling coordinators, fail to satisfy the creditworthiness requirements of the ISO Tariff or have defaulted on payments due under the ISO Tariff and (2) there is no creditworthy counterparty that has taken responsibility for such defaults. In the event of a conflict between the requirements of this section and (a) the ISO Tariff or operating instructions, (b) FERC must-offer requirements or (c) CPUC must-offer requirements, if Duke is subject to any such requirements, the latter shall control over the requirements of this Section 4.2.6.

4.2.7 Antitrust Compliance Plan. Duke Energy Americas, LLC shall institute, within thirty (30) Business Days after the Settlement Effective Date, an antitrust compliance program. The antitrust compliance program shall include not less than the following for directors, officers and employees of Duke Energy Americas LLC's western commercial operations: (i) mandatory antitrust training, which may be computer based training, for each officer and employee; (ii) written compliance standards to be distributed to each officer and employee; (iii) annual review of the compliance program by Duke Energy Americas, LLC's officers and directors, including all outside directors; (iv) appointment of an antitrust compliance officer or an antitrust compliance committee, which may be the Ethics Officer and the Ethics and Compliance Committee of Duke Energy Americas, LLC; (v) confidential reporting and monitoring systems; (vi) disciplinary mechanisms to ensure enforcement of standards; and (vii) protocols and procedures for initiating and concluding internal investigations. For purposes of this Section 4.2.7, with respect to Duke Energy Americas, LLC, the term "employee" shall mean all U.S. exempt employees at the manager level or above for western commercial operations, and the terms "officers" and "directors" shall mean, respectively, the U.S. officers directing western commercial operations and U.S. directors of Duke Energy Americas, LLC.

4.3 Non-Duke Parties' Consideration. In consideration of the respective covenants in this Agreement, each of the California Parties, the Other Claimant Parties, the Local Governmental Parties, the Class Action Parties and Additional Settling Participants shall agree to their respective releases as set forth in Article VII, and shall agree to the remaining terms and conditions of this Agreement that are applicable to such Parties.

4.4 Failure of Consideration Due To California Parties. In the event that (i) the assignment of the Duke Receivables to the California Parties pursuant to Section 4.1.1.6 and/or the associated transfer of the Duke Receivables pursuant to Section 5.3 below fails as the result of a breach by Duke of its representations and warranties set forth in Section 4.1.1.5 and/or Section 12.2, (ii) the cash transfers required of Duke pursuant to Sections 4.1.2. and 4.1.3 are not timely made, in whole or in part, as required by this Agreement, or (iii) any Duke Party takes any of the following action and that action is reasonably likely to have a material adverse affect on the ability of the other Duke Parties to perform fully and timely their obligations under this Agreement: (A) it commences a voluntary case or consents to the entry of any order for relief against it in any involuntary case within the meaning of the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*), (B) it consents to the appointment of a custodian of it or for all or substantially all of its property, or (C) it makes a general assignment for the benefit of its creditors, then the California Parties may at their option, subject to the Duke Parties' cure rights set forth below, terminate this Agreement in writing in its entirety *ab initio* except as to the tolling provisions of this Agreement, *i.e.*, as though the Settlement Effective Date had never occurred. All notices of termination delivered pursuant to this Section 4.4 shall be in writing and addressed to the Duke Parties in accordance with the notice provisions set forth herein, and clearly state the grounds for termination, the identity of any Duke Parties as to which clause (iii) above applies (if applicable), and the date on and after which such termination shall be effective. If the grounds for termination include clause (i) and/or (ii) above and one or more of the Duke Parties completely cures all defaults under those clauses that are identified in the California Parties' notice of termination within five (5) Business Days after the Duke Parties' receipt of that notice of termination, including payment of interest at the FERC Interest Rate on any payments past due under this Agreement, then this Agreement shall not terminate *ab initio* and all defaults identified in the California Parties' notice of termination with respect to clause (i) and/or clause (ii) above shall be deemed to have been cured.

ARTICLE V. DISPOSITION AND ALLOCATION OF SETTLEMENT PROCEEDS AND OTHER MONETARY CONSIDERATION

5.1 Duke Monetary Consideration. The Duke Settlement Proceeds provided under Section 4.1 shall be distributed and allocated in the manner set forth in this Article V.

5.2 Allocation of Duke Settlement Proceeds.

5.2.1 Duke Refunds. For purposes of the allocation of the Duke Settlement Proceeds, Duke shall be deemed to have provided a total Duke refund of \$160,220,853, before any applicable interest, of which \$122,105,245 shall be allocated to the Refund Period (which amount fully reflects the CT485 Credit) and \$38,115,608 shall be allocated to the Pre-October Period. For purposes of this Agreement, "*Duke Refunds*" refers to the foregoing amounts that Duke is obligated to pay pursuant to this settlement, as to which Settling Participants are bound, or as to Non-Settling Participants, amounts that FERC determines in the FERC Proceedings or in the *Lockyer v. FERC* Remand that Duke owes to such Non-Settling Participants for the period January 1, 2000 through June 20, 2001, taking into account all mitigation, adjustments, disgorgement, charges, and

allowances (excluding interest). Duke shall be deemed to have fully discharged its refund obligations to the Settling Participants and Non-Settling Participants (whether they have entered into, opted into or have not opted into this settlement), for the Settlement Period by providing the Duke Settlement Proceeds pursuant to Article IV. Duke shall have no liability to the California Parties, Additional Settling Participants, or Non-Settling Participants with regard to the allocations of Duke Settlement Proceeds or Duke Refunds as made under this Agreement or as decided by FERC in the FERC Refund Determination, the *Lockyer v. FERC Remand*, or otherwise.

5.2.2 Interest. Duke shall have no liability to any Participants nor any responsibility for paying, or otherwise ensuring the payment of, any interest amount to any Participants with respect to Duke Receivables or Duke Refunds, except as expressly provided in Sections 4.1.1.6, 4.1.2.2, 4.1.3, 4.1.3.3, and 4.4, or except as payable out of an applicable Escrow created under this Agreement, but, as to the latter, only to the extent interest is earned on funds in the Escrow. The rate of interest to be paid to Settling Participants associated with the Duke Refunds provided pursuant to this Agreement, for the period prior to amounts being deposited into the Duke Refund Escrow, shall be determined in the FERC Interest Determination. For the period after amounts are deposited in the Duke Refund Escrow, (i) amounts that are held in the Duke Refund Escrow shall earn the rate of interest applicable to such escrow account, and (ii) Settling Participants shall be paid their proportionate share of interest on such amounts at the interest rate earned by the Duke Refund Escrow, and (iii) Settling Participants shall be entitled to no additional interest earned on such amounts for the period after such amounts are deposited in such escrow account.

5.2.3 Fuel Cost Allowance and Emissions Offset. The Duke Refund amount allocated to the Refund Period in Section 5.2.1 incorporates an allowance of fifty percent (50%) of Duke's \$72 million Fuel Cost Allowance claim and one-hundred percent (100%) of Duke's Emissions Offset of \$137,656.

5.2.3.1 No other claim. Duke shall not seek any additional Fuel Cost Allowance as against the California Parties and any Additional Settling Participant.

5.2.3.2 True-up. The Fuel Cost Allowance and Emissions Offset provided for herein shall, as to the total amount applicable to the market as a whole, remain fixed as to the Settling Participants. The proposed allocation of charges for such Fuel Cost Allowance and Emissions Offset from Participants, which is currently based on gross load, shall be subject to adjustment and "true up" to comply with FERC's final orders, after all appeals, if any, specifying the appropriate allocations. For allocation among Settling Participants of Fuel Cost Allowance and Emissions Offsets, applicable allocation percentages will be determined based on the filed allowances and offsets, even though the settlement amount for such allowances and offsets has been reduced in this Agreement from the filed amounts.

5.2.3.3 Net Payers. Because the charges for the Fuel Cost Allowance and Emissions Offset can exceed the Refunds due to a Participant, some Participants may be shown on the matrix in Exhibit A as owing money. Such Participants are referred to herein as "*Net Payers*" if they elect to participate in the

settlement pursuant to Section 8.1. Net Payers will not receive or be liable for payment until the date that FERC requires Participants to pay charges for such allowances in the EL00-95 Proceeding, at which time the payments owed to or owing from such Participants will be trued-up based on FERC's determinations concerning allocation of charges for the Fuel Cost Allowances and Emissions Offsets.

5.3 Transfer of Receivables.

5.3.1.1 Notice to ISO and PX. No later than five (5) Business Days after the Settlement Effective Date, the California Parties shall advise the ISO and the PX that the full amount of the Duke Receivables that have been assigned to the California Parties pursuant to Sections 4.1.1.6 and 4.1.1.7, as well as the associated interest on such Receivables, shall be applied to the funding of refunds and other consideration. Such notice shall specify that the assigned Duke Receivables are available for application for (i) the funding of Duke Refunds to Net Refund Recipients or (ii) to offset the amounts due from Net Payers, in each case as provided in this Agreement.

5.3.1.2 Transfer of Cash from PX Settlement Clearing Account. No later than ten (10) Business Days after the Settlement Effective Date, a cash transfer shall be made from the PX Settlement Clearing Account to the Duke Refund Escrow of \$140,176,006.61, (i) less an amount equal to the total of all Deemed Distributions applicable to Settling Participants pursuant to Section 5.5.2, (ii) less any Paid Duke Receivables, (iii) plus the amounts owed by Participants with negative allocations shown on the Allocation Matrix in Exhibit A.

5.4 Allocations in Allocation Matrix. The Allocation Matrix shall be used to allocate (i) amounts transferred into the Duke Refund Escrow directly by Duke pursuant to Sections 4.1.2.1 and 4.1.2.2; (ii) amounts transferred into the Duke Refund Escrow pursuant to Section 5.3.1.2; (iii) all Deemed Distributions pursuant to Section 5.5.2; and (iv) amounts available for transfer to the Duke Refund Escrow pursuant to Section 4.1.2.6. Amounts allocated pursuant to the Allocation Matrix to Settling Participants shall be distributed from the Duke Refund Escrow or treated as Deemed Distributions as provided herein.

5.5 Distributions of Refunds. The Duke Refunds provided pursuant to Section 5.2.1, less the amounts provided by Duke pursuant to Section 4.1.2.4, are distributable to Settling Participants, as allocated in the Allocation Matrix, either as (i) in the case of Settling Participants who are Net Refund Recipients, as cash distributions from the Duke Refund Escrow, as provided in Section 5.5.1, or (ii) in the case of Settling Participants who are not Net Refund Recipients, as Deemed Distributions, as provided in Section 5.5.2. Distributions pursuant to Sections 5.5.1 and 5.5.2 shall be made to Settling Participants no later than twenty (20) Business Days after the Settlement Effective Date.

5.5.1 Cash Distributions to Net Refund Recipients. Duke Refunds, taking into account charges for Duke's Fuel Cost Allowance and Emissions Offset, allocable in the Allocation Matrix to Settling Participants who are Net Refund Recipients are payable in cash to such Settling Participants who are Net Refund Recipients from the Duke Refund Escrow no later than twenty (20) Business Days after the Settlement Effective Date.

5.5.2 Deemed Distributions to non-Net Refund Recipients. Settling Participants who are not Net Refund Recipients because they have a net outstanding payable to the PX and/or ISO, such as PG&E, or owe net refunds (unadjusted for Fuel Cost Allowances, Emissions Offsets, or charges for same) to the ISO or PX market, as calculated in Exhibits CPX-51 and ISO-30 in the evidentiary hearing in the EL00-95 Proceeding, shall not receive Duke Refunds allocable to them in the Allocation Matrix in cash, except to the extent provided in Section 5.5.3, but shall instead receive their allocable share of Duke Refunds as offsets of amounts owed to the PX or ISO (a "*Deemed Distribution*"). FERC's approval of this Agreement in the FERC Settlement Order shall constitute approval of the treatment and allocation of Deemed Distributions, as provided herein, and constitutes FERC's determination that the escrow established by PG&E pursuant to its Plan of Reorganization for payment of its outstanding debts to the PX may be reduced in an amount equal to its Deemed Distributions under this Agreement.

5.5.3 Distributions of Proceeds of Other Settlements.

5.5.3.1 EL03-152-000 Settlement. The \$549,973 paid by Duke pursuant to Section 4.1.2.4 shall be allocated and refunded as directed by FERC in Docket No. EL03-152-000 or as FERC may otherwise direct. Nothing herein shall preclude any Party from advocating any particular refund allocation methodology with respect to the \$549,973, nor shall any Party be precluded from contesting FERC's orders concerning the disposition of the \$549,973.

5.5.3.2 OMOI Settlement. The \$2,500,000 paid by Duke to FERC pursuant to the Duke-OMOI Settlement shall be attributed to the Pre-October Period, allocated as provided in Section 4.1.2.6 and in the Allocation Matrix pursuant to Section 5.4, and distributed to all Settling Participants from the Duke Refund Escrow in accordance with the Allocation Matrix. The portion of the \$2,500,000 paid by Duke to FERC pursuant to the Duke-OMOI Settlement that is allocated to Non-Settling Participants pursuant to the Allocation Matrix shall remain in the U.S. Treasury account where the funds are currently located, for distribution as FERC shall determine.

5.6 Interest on Distributable Duke Refunds.

5.6.1 Transfer of Interest on Duke Receivables. No later than ten (10) Business Days after FERC issues an order finally determining interest issues and shortfalls associated with the current ISO and PX settlement reruns and refund calculations ("FERC Interest Determination"), a cash transfer shall be made from the PX Settlement Clearing Account to the Duke Refund Escrow of interest owed on the Duke Receivables. As provided in Section 6.1.6, interest accrual on Duke Receivables in the ISO and PX settlements accounts ceases upon distribution of funds from the PX and/or ISO and on implementation of Deemed Distributions by the ISO and PX.

5.6.2 Distribution of Interest on Duke Refunds. No later than ten (10) Business Days following the transfer of interest pursuant to Section 5.6.1, interest amounts owed on Duke Refunds distributed pursuant to Sections 5.5 – 5.5.2 will be paid from the Duke Refund Escrow to Settling Participants, except as provided in Section 5.6.3. The amount of interest to be paid under this Section 5.6.2 shall be determined

pursuant to the FERC Interest Determination, except that interest shall accrue on any Duke Refunds paid from the Duke Refund Escrow at the interest rate earned by the Duke Refund Escrow on such funds for the period such funds are held in the Duke Refund Escrow.

5.6.3 Pre-October Period. No interest shall be payable on Duke Refunds for the Pre-October Period, except for any pro rata share of interest that is earned on those amounts while held in the Duke Refund Escrow prior to distribution.

5.7 CERS. From the amount of Duke Refunds that otherwise are due to CERS, pursuant to Sections 5.5.1 or 5.5.2, an amount determined solely by CERS shall be withheld in the Duke Refund Escrow, or other escrow specified by CERS, until it is reasonably determined whether CERS has any obligations under Sections 5.11.6.3 or 8.3 (amounts held in escrow pursuant to this Section 5.7 are denoted as the "*CERS Escrow*"). The funds in the CERS Escrow may be withdrawn by CERS following: (a) issuance by FERC of the FERC Receivables Determination and the final resolution of any requests for rehearing or any appeals thereof, or, if no such requests for rehearing or appeals are filed, the lapse of any period within which such requests or appeals must be filed, and (b) issuance by FERC of the FERC Refund Determination and the final resolution of any requests for rehearing or any appeals thereof, or, if no such requests for rehearing or appeals are filed, the lapse of any period within which such requests or appeals must be filed.

5.8 Distribution of California Litigation Escrow. All funds in the California Litigation Escrow shall be distributed in accordance with a separate agreement (the "Allocation Agreement") among the California Parties, the Local Governmental Parties, and Other Claimant Parties. Distributions from the California Litigation Escrow will accrue interest only from the date the California Litigation Escrow is funded and at the rate of interest earned on the funds held in the California Litigation Escrow. Duke shall have no liability to any person or entity arising from any failure or default in making distributions from the California Litigation Escrow pursuant to this Section 5.8.

5.9 Non-Settling Participants. Non-Settling Participants shall not receive any accelerated payment of Duke Refunds under this settlement and shall not be guaranteed any specific level of Duke Refunds. The amount of Duke Refunds to which any Non-Settling Participant is entitled shall be determined in the FERC Refund Determination. The amount of Duke Refunds allocable to a Non-Settling Participant so determined in the FERC Refund Determination shall, in the first instance, be paid from funds set aside for payment of Non Settling Participants from the OMOI Settlement and the EL03-152 Settlement, and then from the Duke Refund Escrow. Any shortfall in the Duke Refund Escrow with respect to Duke Refunds owed to Non-Settling Participants shall be covered as provided in Section 5.11 through 5.11.7.

5.10 No Continuing Duke Interest. Duke shall have no continuing interest in any funds in the Duke Refund Escrow or in any allocation or distribution of such funds pursuant to this Agreement. As provided in Section 5.2.1, Duke shall have no liability to any Participant nor any responsibility for paying, or otherwise ensuring the payment of, any funds to any Participant, whether a Settling Participant or a Non-Settling Participant,

other than to make the assignments and payments prescribed in Sections 4.1 through 4.1.3.

5.11 Shortfalls and Excesses. Subject to the limitations and allocations of responsibility set forth in this Section 5.11 and its subsections, the California Parties shall be at risk for adjusting their own recoveries under this Agreement in light of shortfalls arising from Duke transactions in the ISO or PX market for the Settlement Period, as determined in the FERC Proceedings and shall be entitled to the benefit of any additional amounts that are found to be owing to Duke for such transactions in that period.

5.11.1 Time Periods. The California Parties will agree amongst themselves which portion of the Duke Receivables and Duke Refunds relate to which of the Pre-October Period, the Pre-January 18 Period, or the Post-January 17 Period for purposes of adjusting their recoveries in the event of any shortfall or excess referenced in Section 5.11. The Allocation Matrix contains an allocation to these three time periods of Duke Refunds available for Settling Participants.

5.11.2 Receivables Shortfall and Receivables Excess. The amount, if any, by which the Duke Receivables for any of the periods is less than the appropriate portion of the Stated Receivables of \$140,176,006.61 allocated to that period shall be referred to herein as a "*Receivables Shortfall*." The amount if any, by which the Duke Receivables for any of the periods exceeds the appropriate portion of the Stated Receivables of \$140,176,006.61 allocated to that period shall be referred to herein as a "*Receivables Excess*." To the extent that any Distributable Rerun Shortfall is paid from the Rerun Shortfall Escrow to the California Litigation Escrow, such amount shall be added to the Stated Receivables and allocated to the appropriate period or periods for the purpose of determining whether there is a Receivables Shortfall or a Receivables Excess.

5.11.3 Refund Shortfall and Refund Excess. The amount, if any, by which the total of the amounts allocated in the Allocation Matrix to Non-Settling Participants for a particular time period is insufficient to satisfy all Duke Refunds payable to Non-Settling Participants, as determined in the FERC Refund Determination, for the same time period shall be referred to herein as a "*Refund Shortfall*." The amount, if any, by which the total of the amounts allocated in the Allocation Matrix to Non-Settling Participants for a particular time period exceed the amounts needed to satisfy all Duke Refunds payable to Non-Settling Participants, as determined in the FERC Refund Determination, for the same time period shall be referred to herein as a "*Refund Excess*."

5.11.4 Duke's Responsibility. Except for its responsibility with respect to a Rerun Shortfall, as provided in Sections 4.1.3 – 4.1.3.3, Duke shall not be responsible to Settling Participants or to Non-Settling Participants for a Receivables Shortfall or Refund Shortfall and Duke shall not be entitled to claim any interest or right to a Receivables Excess or a Refund Excess.

5.11.5 Distributions to Non-Settling Participants. The California Parties shall pay to the ISO and/or PX, from the Duke Refund Escrow, the California Litigation Escrow or otherwise, pursuant to Section 5.11.6 and subject to Section 5.11.7, the Unsettled Participant Refund Amount for each Non-Settling Participant, determined pursuant to Section 6.1.4.1. Such payment shall be made within the time period FERC

establishes for the payment of refunds in the FERC Refund Determination. The ISO and/or PX shall distribute the Unsettled Participant Refund Amount to each Non-Settling Participant in the manner provided in the FERC Refund Determination.

5.11.6 Responsibility for Shortfalls and Excesses. Subject to the provisions of Section 5.11.7, Refund Shortfalls and Receivable Shortfalls will be paid by the California Parties as provided in Section 5.11.6.1 through 5.11.6.3. Subject to the provisions of Section 5.11.7, to the extent there is a Receivables Excess or Refund Excess, such Receivables Excess or Refund Excess shall be transferred to the California Litigation Escrow and shall be allocated as provided in Sections 5.11.6.1 through 5.11.6.3.

5.11.6.1 Pre-October Period. Each of the California Utilities shall be responsible for its share of any Refund Shortfall or Receivables Shortfall allocated to the Pre-October Period. Any such responsibility shall be deemed to be a reversal of amounts allocated to the California Utilities and shall be paid to the ISO and/or the PX from the amounts allocated to the California Utilities, on a pro rata basis determined with reference to the principal amount of Duke Refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period. The California Utilities shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Pre-October Period. Said amount shall be paid on a pro rata basis determined with reference to the total principal amount of the Duke Refund (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period.

5.11.6.2 Pre-January 18, 2001 Period. Each of the California Utilities shall be responsible for its share of any Refund Shortfall or Receivables Shortfall allocated to the Pre-January 18, 2001 Period, as well as for its share of any Refund Shortfall or Receivables Shortfall attributable to transactions in the PX during the period beginning on January 18, 2001 and ending on January 31, 2001 (such transactions, the "January PX Transactions"). Any such responsibility shall be deemed to be a reversal of amounts allocated to the California Utilities under this Agreement and shall be paid to the ISO and/or the PX from the amounts allocated to the California Utilities, on a pro rata basis determined with reference to the principal amount of Duke Refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period. The California Utilities shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Pre-January 18, 2001 Period. Said amount shall be paid on a pro rata basis determined with reference to the total principal amount of the Duke Refund (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period.

5.11.6.3 Post-January 17, 2001 Period. CERS shall be responsible for any Refund Shortfall or Receivables Shortfall allocated to the Post-January 17, 2001 Period, and shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Post-January 17, 2001 Period, except with regard to any January PX Transactions, responsibility for which Refund Shortfalls or Receivables Shortfalls shall be allocated as set forth in Section 5.11.6.2 above.

5.11.7 Limitations on California Parties' Obligations.

5.11.7.1 General Limitation. Notwithstanding any other provision of this Agreement, no California Party shall have responsibility for any Refund Shortfall or Receivables Shortfall in excess of the total amount of Duke Refunds and/or Deemed Distributions allocated to that California Party under this Agreement for the applicable period.

5.11.7.2 Limitation as to Amounts Owed to Non-Settling Participants. Notwithstanding any other provision of this Agreement, the obligation of any California Party to pay money to Non-Settling Participants (i) shall be limited to payment of claims in the EL00-95 Proceeding and the *Lockyer v. FERC* Remand arising from Duke transactions in the ISO or PX market for the Settlement Period, and shall not encompass payment of claims arising from other transactions or in any other proceeding, and (ii) shall not, in any event exceed the total amount of Duke Refunds and/or Deemed Distributions allocated to that California Party pursuant to this Agreement for the applicable period.

5.11.7.3 Settlement with Non-Settling Participants. Duke retains the right to negotiate with and enter into settlement of claims with Non-Settling Participants, and such settlements may, if approved by FERC, establish the amount of Duke Refunds payable to such Non-Settling Participant, but absent written consent of each of the California Parties, in their sole discretion, the amount of any such settlement that will be paid from the Duke Refund Escrow, the California Litigation Escrow, or otherwise by the California Parties may not exceed the amount of Duke Refunds that would have been allocated to that Non-Settling Participant if it had become an Additional Settling Participant.

5.11.7.4 Settlement Period. Without limiting the foregoing in Section 5.11.7, nothing in this Agreement shall require the California Parties to bear any liability to any party relating to Duke sales outside of the ISO and PX for the period January 1, 2000 through June 20, 2001 or for any transactions prior to January 1, 2000 or after June 20, 2001.

5.11.8 California Parties' Interest in Receivables Excess and Refund Excess. Any amounts not distributed to other Participants pursuant to this Agreement that remain in the Duke Refund Escrow, after all Duke Refunds have been paid to Settling and Non-Settling Participants, as provided in this Agreement, shall be transferred to the California Litigation Escrow.

**ARTICLE VI.
ISO AND PX ACCOUNTING**

6.1 FERC-Directed Compliance. As a result of the FERC's approval of this Agreement in the FERC Settlement Order, the ISO and/or PX shall be required to do the following:

6.1.1 General Accounting Treatment. The ISO and PX shall conform their books and records to reflect the distributions, offsets, transfers and status of accounts provided for in this Agreement.

6.1.2 Accounting Treatment of Assigned Duke Receivables. The PX and ISO shall reflect on their books and records all distributions from the PX Settlement Clearing Account to the Duke Refund Escrow that represent payments of amounts owed by the ISO to the Duke Parties for the Duke Receivables. The ISO shall recognize, as a reduction in the amounts payable by the PX to the ISO, all distributions from the PX Settlement Clearing Account to the Duke Refund Escrow that represent payments of amounts owed by the ISO to the Duke Parties for the Duke Receivables.

6.1.3 Calculation of Duke Receivables. The ISO and PX shall calculate the amount of the Duke Receivables, and submit those calculations for approval to FERC at the same time that they submit their calculations of receivables for other Participants. Within ten (10) Business Days after the FERC Receivables Determination, the ISO and PX shall divide the unpaid Duke Receivables as determined in the FERC Receivables Determination between the Pre-January 18, 2001 Period and the Post-January 17, 2001 Period, to the extent such division between time periods is not provided in the FERC Receivables Determination.

6.1.4 Calculation and Accounting Treatment of Distributions To Settling Participants and Non-Settling Participants. The ISO and PX shall calculate the amount, if any, that the Duke Parties would owe in refunds pursuant to FERC's orders in the EL00-95 Proceeding for each of three time periods: the Pre-October Period, the Pre-January 18, 2001 Period and the Post-January 17, 2001 Period ("*Unsettled Duke Refund Amounts*"), and submit those calculations for approval to FERC at the same time that they submit their calculations of refunds for other Participants.

6.1.4.1 Calculation of Duke Refund Amounts For Individual Participants. Following the date of the FERC Refund Determination, but prior to the date on which refunds are to be paid pursuant to the FERC Refund Determination, the ISO and PX shall determine the portion of the Unsettled Duke Refund Amounts that, absent this Agreement, would be deemed to be owed to each Participant that is entitled to receive refunds ("*Unsettled Participant Refund Amount*"). The ISO and PX shall determine the Unsettled Participant Refund Amount for each Participant by multiplying the Unsettled Duke Refund Amounts for each respective time period by each Participant's percentage share of total refunds in the combined ISO and PX markets for that time period.

6.1.4.2 Accounting Treatment of Distributions to Settling Participants. The ISO and PX shall reflect on their books and records that Settling Participants have, through this Agreement, been paid in full their share of all Duke Refunds allocated to them under this Agreement and shall not be entitled to receive the Unsettled Participant Refund Amount if different from the amount of Duke Refunds allocated to each respective Settling Participant under this Agreement.

6.1.4.3 Accounting Treatment of Deemed Distributions. The PX and ISO shall reflect Deemed Distributions on the books and

records of the PX and ISO as reductions in the amounts owed to the PX and/or ISO by any Settling Participant that receives a Deemed Distribution.

6.1.5 Adjustments. Any adjustments to the amounts shown in the Allocation Matrix pursuant to Section 5.2.3.2 or Section 13.3 will be reflected on the books and records of the PX and ISO when these amounts become known. Any such changes will be implemented through a compliance filing with, or order by, FERC.

6.1.6 Interest Accrual. The PX and ISO shall reflect in their books and records, with respect to Settling Participants, that the accrual of interest at the FERC-established rate on principal amounts subject to the FERC Interest Determination as provided for in Section 5.2.2 ceases upon the distribution of funds from the PX and/or the ISO to the Duke Refund Escrow pursuant to this Agreement, or as may be accomplished through the implementation of Deemed Distributions, and, for purposes of the accounts of the PX and the ISO, no interest on such funds shall accrue after distribution.

6.2 Duke Parties' Collateral. The California Parties acknowledge and agree that (i) upon the Settlement Effective Date, all of the Duke Parties' liabilities in the PX will be deemed billed and settled for purposes of Schedule 2, Section 2.2 of the PX tariff and (ii) that within fifteen (15) Business Days of the Settlement Effective Date, the Duke Parties shall be entitled to a release by the PX of any and all collateral posted by any of the Duke Parties. FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the PX to release any and all of the Duke Parties' collateral as herein provided.

6.3 Duty of Cooperation. Each Party shall reasonably and in good faith cooperate and take all reasonable steps to secure (i) the release of funds from the PX Settlement Clearing Account to the Duke Refund Escrow as contemplated by this Agreement; (ii) the accounting treatment contemplated under this Article VI; and (iii) any other acts of the PX or the ISO necessary to effectuate the terms of this Agreement. This duty of cooperation shall include making individual or joint requests to the PX or the ISO, executing appropriate waivers, providing data, and providing other assistance to the PX and the ISO as necessary to implement this Agreement. If any disputes arise between the Parties and the PX or the ISO in connection with the fulfillment of the Parties' obligations under this Agreement, the Parties shall resolve such dispute in accordance with Section 9.1.

6.4 Tariff Waivers. FERC approval of this Agreement in the FERC Settlement Order shall constitute a grant of such waivers of the ISO and the PX tariffs as may be necessary for the ISO and the PX to disburse such funds as required by this Agreement, to account for transfers, allocations and distributions of funds as required by this Agreement, and to otherwise implement this Agreement.

ARTICLE VII. RELEASES AND WAIVERS

7.1 Effectiveness. Unless otherwise provided in this Article VII, and subject to the rights of the California Parties under Section 4.4 of this Agreement, the releases, waivers, and undertakings provided in this Article VII are effective upon the

Settlement Effective Date. The releases in Section 7.12 shall become effective upon the Local Government Effective Date. The releases in Section 7.14 shall become effective upon the California Class Action Effective Date. The releases in Section 7.15 shall become effective upon the Egger Class Action Effective Date. The releases set forth in Sections 7.2 through 7.8 shall run to, benefit, and be enforceable by any individual who, as an officer, director, agent, or employee of a corporate or organizational party that receives the benefits of such releases insofar as s(he) participated as an officer, director, agent or employee in or might be claimed to be liable for any of the actions or events of potential liability for which a party is released by Sections 7.2 through 7.8. The release and discharge of individuals effected by this Section 7.1 is not intended to expand the number or identity of corporate or organizational entities released or discharged by any of Sections 7.2 through 7.8. No other parties that are not Parties to this Agreement shall be entitled to the benefits of, and/or entitled to enforce, the releases provided for in Sections 7.2 through 7.8.

7.2 Proceedings and Issues Settled as Between Duke Parties and the California Parties, Additional Settling Participants, and Other Claimant Parties.

7.2.1 All Claims Against Duke for Refunds, Disgorgement of Profits and Other Monetary or Non-monetary Relief. In return for the consideration specified elsewhere in this Agreement, and subject to obtaining any regulatory approvals required under this Agreement, all claims against Duke for refunds, disgorgement of profits, or other monetary or non-monetary remedies in the EL00-95 Proceeding, FERC Docket EL01-10, and the *Lockyer v. FERC* Remand as they relate to sales by Duke in the ISO and PX and sales by Duke to CERS, from January 1, 2000 through June 20, 2001 shall be deemed settled, provided that the EL00-95 Proceeding, FERC Docket EL01-10, and *Lockyer v. FERC* Remand shall not be deemed settled by this Agreement as to Non-Settling Participants.

7.2.2 No Contest of Duke Refund Amount. Duke and the California Parties agree that they will not contest the amount of refund liability and/or offsets attributable to Duke in the EL00-95 Proceeding, except as may be specifically provided in this Agreement.

7.2.3 No Rehearing or Appeal. The California Parties agree that they will not dispute, challenge, seek rehearing, or pursue appeal of the outcome of FERC's investigations in Docket Nos. PA02-2, IN03-10, and EL01-10 and FERC's Physical Withholding Investigation, as they relate to Duke and will withdraw their challenges and not submit any new challenges to the outcome of FERC's investigations in Docket Nos. PA02-2, IN03-10 and EL01-10 and FERC's Physical Withholding Investigation, as they relate to Duke. Without limiting the foregoing, the California Parties shall withdraw, with prejudice, (i) their petition for review of FERC's order approving the Duke-OMOI settlement in *Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C.*, Order Approving Stipulation and Consent Agreement, 105 FERC ¶ 61,307 (Dec. 19, 2003), *reh'g denied*, 106 FERC ¶ 61,177 (Feb. 19, 2004) and (ii), as to the Duke Parties, their motion for clarification and request for additional procedures and, in the alternative, request for rehearing of the Commission's determination in its Anomalous Bidding Investigation in *San Diego Gas & Elec. Co. v. Sellers, et al.*, Docket Nos. EL00-95-000 *et al.*, (Aug. 18, 2004).

7.2.4 EL03-152-000. The California Parties agree that they will not dispute, challenge, object to, seek rehearing of, or pursue appeal of the settlement between FERC Trial Staff and Duke in FERC Docket No. EL03-152-000, and that the California Parties will withdraw any claim that the amount of that settlement should have been increased based on the treatment of replacement reserves, an issue that was addressed in comments on the EL03-152 settlement. The amounts paid by Duke pursuant to that settlement shall be credited as a payment under Section 4.1.2.4 and shall be distributed as provided in Section 5.5.3.1. In light of the California Parties' withdrawal and resolution of claims relating to replacement reserves, the California Parties and Duke will jointly file a motion to strike Paragraphs 3-15 and the third sentence of Paragraph 2, beginning "The California," from FERC's September 21, 2004 Order in Docket No. EL03-152, 108 FERC ¶ 61,259 (2004), which paragraphs are moot. Such joint motion will be filed on or before October 5, 2004 and will request Commission action prior to October 20, 2004. If an order striking the paragraphs is not issued by October 20, 2004, Duke and the California Parties will jointly file a request for rehearing of the September 21, 2004 order, on grounds of mootness only, seeking elimination of the above referenced portion of the order. The California Parties' withdrawal of their claim relating to replacement reserves will be effective on execution of this Agreement, and the Duke obligation to support the California Parties in efforts to strike language relating to that issue from the FERC order, on grounds of mootness only, will likewise be effective on execution of this Agreement, notwithstanding any other provision of this Agreement.

7.2.5 CERS Transactions. Duke agrees to forgo any claim for refunds resulting from any mitigation of CERS' sales of imbalance electricity into the ISO real time market, as well as surcharges associated with such sales, that may be required pursuant to FERC's May 12, 2004 Order on Requests for Rehearing and Clarification in Docket Nos. EL00-95-087 and EL00-98-074 or subsequent order. If, notwithstanding such waiver, Duke is allocated any CERS refunds or surcharges, it hereby assigns those refunds and surcharges to CERS.

7.2.6 Refund Proceeding and Prospective Mitigation. Duke shall withdraw all outstanding challenges to the orders in the EL00-95 Proceeding and FERC Docket No. EL03-152-000 proceeding with respect to Duke, provided that Duke may continue to challenge any matter involving prospective mitigation for periods after June 20, 2001 and the California Parties may continue to assert their respective positions on the issue of prospective mitigation for periods after June 20, 2001, and may continue to assert any position on refunds as related to suppliers other than Duke.

7.2.7 Inverse Condemnation Cases. Duke releases all claims that is has asserted or could have asserted in the Inverse Condemnation Cases, *provided*, however, that such release shall release only those claims that Duke can assert in such litigation on its own behalf, and shall not release or prejudice the rights of any other party to such proceeding (including the rights of the PX or other PX market participants).

7.2.8 Duke Defenses. As to Non-Settling Participants, Duke shall not be deemed to have waived its right or ability to assert any and all claims and defenses it may have against Non-Settling Participants and Duke shall not be deemed to have waived its right or ability to make any claims, defenses, arguments or take any positions in any proceedings, including the FERC Proceedings, and to resist claims by or pursue claims

against such Non-Settling Participants. Nothing in this Agreement shall preclude or in any way limit Duke's defense under the Duke-OMOI Settlement Agreement against any claims by any parties that Duke owes obligations to the ISO, the PX or to any market participant, outside the EL00-95 Proceeding and this Agreement, with respect to the California and western wholesale electricity markets during the period January 1, 2000 through June 20, 2001.

7.2.9 Resolution of All Duke Obligations in FERC Proceedings. The FERC Settlement Order shall constitute confirmation that Duke's obligations to make any payment to any entity under the EL00-95 Proceeding are hereby settled in their entirety, as provided in this Agreement.

7.2.10 Capacity to Receive Refunds. The FERC Settlement Order shall constitute authorization for the payment of any Duke Refunds to the Settling Participants in their capacity as Scheduling Coordinators of record in the ISO and/or as PX Participants in the PX.

7.2.11 No appeal of FERC Settlement Order. No Party or Settling Participant may seek rehearing of, or appeal, the FERC Settlement Order.

7.3 Release of Receivables Disputes.

7.3.1 PX and ISO accounts. Effective upon the Settlement Effective Date, Duke hereby waives and releases any disputes regarding existing ISO and PX settlements for the period January 1, 2000 through June 20, 2001. As assignee of the Duke Receivables for the period January 1, 2000 through June 20, 2001, the California Parties may pursue, at their expense, any disputes regarding any future ISO or PX settlement or invoicing adjustments affecting the consideration that they receive under this settlement.

7.3.2 CT485 Claim. Without limiting the generality of Section 7.3.1, Duke agrees to withdraw with prejudice the CT 485 Claim. For purposes of the calculation of the Rerun Shortfall, pursuant to Section 4.1.3.1, if, as part of the Preparatory Rerun, the ISO were to reverse its rescission of payments for energy and ancillary services or its imposition of penalties, as described in Duke's CT485 Claim, such reversals would not be taken into account in determining the Duke Receivables that are compared to Stated Receivables. To the extent there are no ISO reversals of rescission of payments for energy and ancillary services or of imposition of penalties, the Preparatory Rerun and the calculation of the Rerun Shortfall shall be unaffected by Duke's withdrawal of its CT485 Claim.

7.4 FERC and Federal Power Act Releases.

7.4.1 Releases. Subject to Sections 7.4.2 and 7.9, the Duke Parties, on the one hand, and the California Parties and Other Claimant Parties, on the other hand, as of the Settlement Effective Date, shall mutually release and discharge one another from any and all past, existing and future claims, obligations, losses, causes of action, allegations, demands and liabilities arising at FERC and/or under the Federal Power Act, whether known or unknown, whether asserted or unasserted, for refunds, disgorgement of

profits, payments, penalties, or other monetary or non-monetary remedies, to the extent such claims concern, pertain to, or arise, from allegations that:

7.4.1.1 Unjust and Unreasonable Rates. Any of the Duke Parties or California Parties directly or indirectly charged or collected unjust, unreasonable or otherwise unlawful rates, prices, terms or conditions for electric energy, ancillary services, or transmission congestion in the western electricity markets, or in western natural gas markets, during the Settlement Period;

7.4.1.2 Market Manipulation. Any of the Duke Parties or California Parties directly or indirectly manipulated the western electricity or western natural gas markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final FERC Staff Report in Docket PA02-2, or any other forms of market manipulation), or otherwise violated any applicable tariff, regulation, law, rule or order relating to the western electricity or western natural gas markets during the Settlement Period; or

7.4.1.3 Congestion. Any California Parties are liable for payments to the Duke Parties for congestion charges or for sales of energy or ancillary services during the Settlement Period.

7.4.2 Market-based Rate Authority. The releases set forth in Sections 7.4.1.1-7.4.1.3 do not affect any of the Parties' rights and obligations in FERC proceedings pertaining to Duke's market-based rate authority insofar as and to the extent that those proceedings may relate to transactions undertaken during, or requests for relief concerning, a period outside the Settlement Period.

7.5 Civil Claims Releases.

7.5.1 Releases. Subject to Section 7.9, the Duke Parties, on the one hand, and the California Parties and Other Claimant Parties, on the other hand, shall mutually release and discharge one another from any and all past, existing and future claims for civil damages and/or equitable relief, whether known or unknown, whether asserted or unasserted, concerning, pertaining to, or arising from allegations that:

7.5.1.1 Unjust and Unreasonable Rates. Any of the Duke Parties or California Parties directly or indirectly charged or collected unjust, unreasonable or otherwise unlawful rates, prices, terms or conditions for energy, ancillary services, or transmission congestion in the western electricity markets or in western natural gas markets during the Settlement Period;

7.5.1.2 Market Manipulation. During the Settlement Period, any of the Duke Parties or California Parties directly or indirectly manipulated the western electricity or western natural gas markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final FERC Staff Report in Docket PA02-2, or any other forms of market manipulation); or

7.5.1.3 Unjust Enrichment. Any of the Duke Parties or California Parties was unjustly enriched by any conduct giving rise to the claims released in Section 7.4 or 7.5 or otherwise violated any applicable tariff, regulation, law, rule or order relating to transactions in the western electricity or natural gas markets during the Settlement Period; or

7.5.1.4 Congestion. Any California Parties are liable for payments to Duke for congestion charges or for sales of energy or ancillary services during the Settlement Period.

7.6 Scope of FERC, Federal Power Act and Civil Claims Releases. The scope of the releases provided in Sections 7.4 and 7.5 are intended to include releases, subject to the limitations set forth in this Agreement, of the following with respect to the Settlement Period:

7.6.1 Sales-based Claims. All claims against Duke for refunds or other price adjustments arising from sales of electricity and natural gas by Duke into the western electricity or natural gas markets;

7.6.2 Civil Claims. To the extent not encompassed in Section 7.6.1, all claims against Duke for damages and other relief based on federal and state antitrust statutes, Section 17200 of the California Business and Professions Code and any similar statutes of any other state, common law torts, and any and all similar civil statutes and causes of action at law or in equity for damages or restitution as such claims or damages would concern Duke's sales of electricity or natural gas in the western markets;

7.6.3 Other Claims. Claims against Duke for any transactions not currently being litigated at FERC but included in rehearing applications pending at FERC, or included in petitions for review, filed by one or more of the Settling Participants; and

7.6.4 Price Indices Claims. Claims against Duke seeking refunds, damages, restitution and/or penalties associated with Duke's alleged manipulation of published natural gas price indices directly (e.g., through mis-reporting to price index publishers) or indirectly (e.g., through alleged wash trades).

7.7 Cooperation with Investigations and Withdrawal from Proceedings. The California Parties may continue to cooperate with all state and federal investigations and to participate in all matters before FERC; *provided that*, as of the Settlement Effective Date, the California Parties shall withdraw from and/or not prosecute any litigation, administrative proceedings and investigations with respect to Duke insofar as such prosecution would be inconsistent with the foregoing released claims.

7.8 *Lockyer v. FERC*. The releases set forth in this Article VII include any claims, causes of action, demands or defenses of the California Parties, Other Claimant Parties and Additional Settling Participants against the Duke Parties at FERC that are premised on the factual and legal contentions forming the basis for the appeal to the United States Court of Appeals for the Ninth Circuit in *Lockyer v. FERC*, Case No. 02-73093, ___ F.3d ___ (opinion filed Sept. 9, 2004). The California Attorney General and

other California Parties agree that within ten (10) days of the Settlement Effective Date they will file at FERC to withdraw all claims against Duke in the *Lockyer v. FERC* Remand and ask that Duke be dismissed as a party to that proceeding.

7.9 Limitations on Releases.

7.9.1 RMR Claims. The releases set forth in this Article VII do not include any release by the California Parties, or any of them, related to claims and disputes arising out of any RMR Contract or the terms of the ISO Tariff relating to the dispatch or payment of RMR generation. Such claims and disputes are not the subject of this Agreement nor is resolution of such claims and disputes a condition precedent or subsequent to the effectiveness of this Agreement.

7.9.2 Certain Attorneys General Actions. The releases set forth in this Article VII do not constitute a waiver or release by the California, Oregon or Washington Attorneys General of (1) the right to proceed under their respective criminal laws against any of the Duke Parties for any actions of or omissions by Duke both before or subsequent to the Settlement Effective Date, or (2) for any actions or omissions which were willfully fraudulent, provided, however, that this limitation on the scope of the releases set forth in this Article VII does not apply to any claim that is based solely upon acts or omissions of Duke that occurred prior to the Settlement Effective Date and either (i) is currently known as of the Execution Date by the California, Oregon or Washington Attorneys General's offices, or (ii) has previously been remediated by this settlement or otherwise.

7.9.3 Participation in Other Proceedings. All Parties to this Agreement shall remain free to participate in any existing proceeding, or to initiate or participate in any future proceeding, addressing matters not settled in this Agreement, such as generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.

7.9.4 Bilateral Contract Dispute. Nothing herein addresses or resolves the dispute between Duke and SCE concerning the bilateral contract between them that was terminated by Duke in or about February 2001, and which is currently subject to arbitration, except that, within five (5) business days of the Settlement Effective Date, Duke shall withdraw with prejudice all existing or potential cross-claims in the arbitration proceeding that are based on claims released in this settlement.

7.9.5 Effect of Other Releases. Nothing in the provisions of this Agreement relating to the California Class, the Egger Class or the Local Governmental Parties shall modify any of the provisions relating to the California Parties, the Other Claimant Parties or Additional Settling Participants.

7.10 Tolling of Limitations Periods. The California Parties and Duke acknowledge and agree that the currently in place tolling of time limitations with respect to the matters released in this Article VII shall be further tolled pending receipt of the Required Approvals as provided in Article VII from the period of time between July 12, 2004 and the earlier of (i) the date on which the Settlement Effective Date occurs or (ii) termination of this Agreement pursuant to Section 4.4. For purposes of this Section 7.10,

"currently in place tolling of time limitations" means the currently in place tolling of any statute of limitations or similar defenses based on the passage of time with respect to matters released in this Article VII, including time periods governing or relevant to mandatory dismissal, laches, estoppel, abandonment of claims, waiver or bar of claims, or the time within which to raise objections or defenses. If this Agreement is terminated pursuant to Section 4.4, or approval is not obtained as provided in Section 10.1, or if this Agreement is otherwise invalidated, the Parties agree notwithstanding any other provision in this Agreement that the tolling provided for in this Section 7.10 will remain in effect.

7.11 No Assistance to Remaining Litigants. No Settling Participant shall subsidize or assist the litigation, discovery, investigation or analysis of any other party or market participant pertaining to the claims, or the subject matter of the claims, released as to the Duke Parties by or for that Settling Participant pursuant to this Article VII; provided that nothing herein shall preclude any Settling Participant from continuing litigation on the same or similar grounds, or related investigatory activities, against suppliers other than the Duke Parties. Duke shall not provide assistance to any other litigants in their efforts relating to litigation against the California Parties concerning the matters that are the subject of the releases provided in this Article VII. Nothing in this Section 7.11 shall preclude Parties or Settling Participants from providing information to others as required by law.

7.12 Local Governmental Parties Release.

7.12.1 Release. The Local Governmental Parties, on the one hand, and Duke, on the other hand, shall, as of the Local Government Effective Date, fully, finally and completely release and discharge the other, their respective owners, officers, directors, employees, attorneys, agents, past and present, anyone acting on its behalf, Richard Priory, Brad Karp and Harvey Padewer, from any and all causes of action, demands, rights, damages, liability, fees, costs or claims of any nature whatsoever, known and unknown, arising from Duke's actions in connection with the provision of electric power at any time prior to June 30, 2004, including, but not limited to claims: (a) for any excessive, unlawful, or unjust and unreasonable charges, rates or prices in California and western electricity markets; (b) relating to the existence or exercise of market power in California and western electricity markets; (c) relating to any alleged violations of any governing electricity-related tariff, order, resolution or rule, including without limitation ISO and PX MMIPs; (d) relating to Duke's acquisition, operation, or management of facilities for the generation of electric power; or (e) arising from or relating to Duke's operations in connection with the purchase, sale, trading, marketing or transmission of electric power, including but not limited to its bidding, trading or participation in California or western electricity markets, or any economic or physical withholding. This release waives and resolves any and all claims that the Local Governmental Entities have made, or could have made, or on behalf of whom was made, against Duke in or before any federal, state or local court or agency, including FERC, arising out of the foregoing, including but not limited to claims under California Business & Professions Code § 17200, the Federal Power Act, any federal or state antitrust claims, and any taxpayer or other representative claims. The Local Governmental Parties shall withdraw from and not prosecute any litigation, administrative proceedings and

investigations with respect to Duke insofar as such prosecution would be inconsistent with the foregoing released claims.

7.12.2 Reservation. This Section 7.12 shall not restrict the ability of the Local Governmental Parties to continue to participate in any existing proceeding, or to bring or participate in any future proceeding that does not include specific claims against Duke. This settlement shall not release any claims by the Local Government Parties against any entity (except for Duke) and shall in no way restrict the ability of the Local Governmental Parties in the Wholesale Electricity Antitrust Cases to continue to participate in any existing proceeding, or to bring or participate in any future proceeding that does not include specific claims against Duke but could indirectly affect them, such as but not limited to proceedings concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation. These releases do not affect any of the Local Government Parties' rights and obligations in the proceedings pertaining to Duke's market-based rate authority insofar as they may relate to transactions undertaken during, or requests for relief concerning, a period outside the time period January 1, 2000 through June 20, 2001. The Local Governmental Parties may continue to cooperate with all state and federal investigations and to participate in all matters before FERC.

7.13 [Section left blank intentionally]

7.14 California Class Releases. On the California Class Action Effective Date, the California Class on the one hand, and Duke on the other hand, shall fully, finally and completely release and discharge each other, and their respective owners, officers, directors, employees, attorneys, agents, past and present, anyone acting on their behalves, Richard Priory, Brad Karp and Harvey Padewer, from any and all causes of action, demands, rights, damages, liability, fees, costs or claims of any nature whatsoever, known and unknown, arising from Duke's actions in connection with the provision of electric power at any time prior to June 30, 2004, including, but not limited to claims: (a) for any excessive, unlawful, or unjust and unreasonable charges, rates or prices in California and western electricity markets; (b) relating to the existence or exercise of market power in California and western electricity markets; (c) relating to any alleged violations of any governing electricity-related tariff, order, resolution or rule, including without limitation ISO and PX MMIPs; (d) relating to Duke's acquisition, operation, or management of facilities for the generation of electric power; or (e) arising from or relating to Duke's operations in connection with the purchase, sale, trading, marketing or transmission of electric power, including but not limited to its bidding, trading or participation in California or western electricity markets, or any economic or physical withholding. This release waives and resolves any and all claims that the California Class have made, or could have made, or on behalf of whom was made, against Duke in or before any federal, state or local court or agency arising out of the foregoing, including but not limited to claims under California Business & Professions Code § 17200, any federal or state antitrust claims, and any taxpayer or other representative claims. This Section 7.14 shall not restrict the ability of the California Class to continue to participate in any existing proceeding, or to bring or participate in any future proceeding that does not include specific claims against Duke. This settlement shall not release any claims by the California Class against any entity (except for Duke) and shall in no way restrict the ability of the California Class in the Wholesale Electricity

Antitrust Cases to continue to participate in any existing proceeding, or to bring or participate in any future proceeding that does not include specific claims against Duke but could indirectly affect them, such as but not limited to proceedings concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.

7.15 Egger Class Releases. On the Egger Class Action Effective Date, the Egger Class fully, finally and completely releases and discharges Duke, and its owners, officers, directors, employees, agents, past and present, anyone acting on its behalf, Richard Priory, Brad Karp and Harvey Padewer, from any and all causes of action, demands, rights, damages, liability, fees, costs or claims of any nature whatsoever, known and unknown, arising from Duke's actions in connection with the provision of electric power at any time prior to June 30, 2004, including, but not limited to claims: (a) for any excessive, unlawful, or unjust and unreasonable charges, rates or prices in California and western electricity markets; (b) relating to the existence or exercise of market power in California and western electricity markets; (c) relating to any alleged violations of any governing electricity-related tariff, order, resolution or rule, including without limitation CAISO and CalPX MMIPs; (d) relating to Duke's acquisition, operation, or management of facilities for the generation of electric power; or (e) arising from or relating to Duke's operations in connection with the purchase, sale, trading, marketing or transmission of electric power, including but not limited to its bidding, trading or participation in California or western electricity markets, or any economic or physical withholding. This release waives and resolves any and all claims that the Egger Class have made, or could have made, or on behalf of whom was made, against Duke in or before any federal, state or local court or agency arising out of the foregoing, including but not limited to claims under California Business & Professions Code § 17200, any federal or state antitrust claims, any similar statutes of any other state, common law torts such as fraud, any and all similar civil statutes and causes of action at law or in equity for damages or restitution, and any taxpayer or other representative claims. This section shall not restrict the ability of the Egger Class to continue to participate in any existing proceeding, or to bring or participate in any future proceeding that does not include specific claims against Duke. This settlement shall not release any claims against any entity (except for Duke) and shall in no way restrict the ability of the Egger Class in Egger to continue to participate in any existing proceeding, or to bring or participate in any future proceeding that does not include specific claims against Duke but could indirectly affect them, such as but not limited to proceedings concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.

7.16 No Assistance. Any Party that has released Duke regarding a claim or claims under this Article VII shall not subsidize or assist the litigation, discovery, investigation or analysis of any other party pertaining to the same claims against Duke. This does not, however, preclude any such Party from continuing litigation on the same or similar grounds, or related investigatory activities, against suppliers other than Duke. Duke shall not provide assistance to any other litigants in their efforts relating to litigation against any California Party concerning the matters that are the subject of the releases in this Article VII. Duke shall not provide assistance to any other litigants in their efforts relating to litigation against the California Class in the Wholesale Electricity

Antitrust Cases or against the Egger Class in Egger. Nothing in this provision shall preclude Parties from providing information to others as required by law.

7.17 [Section left intentionally blank]

7.18 Waiver of Appeals and Requests for Rehearing.

7.18.1 Each of the Settling Participants shall forego any rights to seek rehearing of, or appeal, any and all of the claims released and matters settled herein by each of them with respect to any of the Duke Parties.

7.18.2 Each of the Duke Parties shall (i) forego any rights to seek rehearing of, or appeal, any and all of the claims released and matters settled herein by them with respect to any of the Settling Participants and (ii) take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions in appeals) with respect to such released claims as against any such Settling Participants.

7.18.3 Nothing in this Agreement shall preclude any of the California Parties from participating fully in any request for rehearing or appellate proceeding to the extent those proceedings relate to claims by the California Parties against market participants other than the Duke Parties.

7.19 Effectiveness of Releases; Waiver of Unknown Claims. The Parties acknowledge and agree that, except as expressly reserved in Section 7.9, it is their intention that the releases granted pursuant to this Article VII shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses and liabilities of every kind, known or unknown, suspected or unsuspected, hereinabove specified in this Article VII. In furtherance of this intention, the Duke Parties, on the one hand, and the California Parties and the Other Claimant Parties, on the other hand, with respect to the specific matters released herein, each knowingly, voluntarily, intentionally and expressly waive, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby, except as expressly reserved in Section 7.9, to fully, finally and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Article VII. This Agreement is intended to include in its effect, without limitation, other than the

limitations set forth in Section 7.9, all claims encompassed within the settlement and releases set forth in this Article VII, including those which the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims, except as expressly reserved in Section 7.9. The releases set forth in this Article VII shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this Agreement. Notwithstanding the waiver of California Civil Code Section 1542, the Parties acknowledge and agree that the releases provided for in this Agreement are specific to the matters set forth in this Article VII and are not intended to create general releases as to all claims, or potential claims, between the California Parties and the Other Claimant Parties or any of them, and the Duke Parties.

ARTICLE VIII.

PARTICIPANTS' ELECTION TO PARTICIPATE IN SETTLEMENT

8.1 Election to Participate in Settlement. The Parties acknowledge and agree that upon the filing of this Agreement at FERC, any Participant that elects to be bound by this Agreement may become an Additional Settling Participant and shall be bound by its terms by notifying FERC that the Participant wishes to become a Settling Participant or that the Participant does not oppose the application of this Agreement to that Participant. Copies of such notice shall be served on the service lists to the FERC Proceedings in accordance with FERC's rules. Any Participant that has not provided such notice on or prior to the date that is five (5) Business Days following the Settlement Effective Date shall have no right to participate in the settlement contemplated under this Agreement, absent the agreement of the California Parties and the Duke Parties, and shall be deemed a Non-Settling Participant for purposes of this Agreement.

8.2 Releases. Each Participant electing to be an Additional Settling Participant bound by this Agreement pursuant to Section 8.1 shall be deemed to have provided all of the releases of claims against the Duke Parties set forth in Article VII, and the Duke Parties shall be deemed to have provided or received the releases set forth in Article VII as they relate to such Settling Participant. Non-Settling Participants shall not be deemed to have provided or received any of the releases set forth in this Agreement.

8.3 Effect of Non-Participation. If any Non-Settling Participant asserts claims for Duke Refunds or seeks any other form of monetary relief at FERC in the FERC Proceedings for any claims arising out of or relating to Duke transactions in the ISO and PX markets during the Settlement Period, any additional funds, beyond the funds allocated to Non-Settling Participants in the Allocation Matrix, needed to resolve such claims pursuant to the FERC Refund Determination shall be paid by the respective California Parties from the amounts allocated to them under this Agreement as provided in Section 5.11, subject to the limitation thereon in Section 5.11.7.

8.4 Pursuit of the Fuel Cost Allowance.

8.4.1 Duke's Claim Against Non-Settling Participants. The California Parties agree that they will not challenge or oppose Duke's defense of its Fuel Cost Allowance claim as against Non-Settling Participants, will not seek discovery or

other relief against Duke's claims against Non-Settling Participants and will not assist any other party's claim or defense against Duke with respect to Duke's Fuel Cost Allowance claims.

8.4.2 FERC Filing. The California Parties agree to support a joint filing made with Duke requesting that the FERC waive application of its May 12 Order with respect to Duke's obligation to file an audited Fuel Cost Allowance claim until after this Agreement is acted on, and to not require Duke to submit an audited Fuel Cost Allowance claim if this Agreement is approved. All Additional Settling Participants that opt into this settlement, pursuant to Section 8.1, shall be required, as a condition of their election, to agree to these same undertakings of the California Parties in this Section 8.4.2.

8.4.3 Continued Defense of Fuel Cost Allowance Claim. If and to the extent that FERC does not grant the motion made pursuant to Section 8.4.2, Duke shall continue to defend its Fuel Cost Allowance claims as to Non-Settling Participants, notwithstanding any other provision of this Agreement. If such motion is denied, Duke shall, at its own expense, submit its fuel cost data and claim to the auditor. The California Parties shall bear, at their own expense, the costs of the audit and any further third-party costs Duke incurs in defense of its Fuel Cost Allowance claim. The California Parties may, at their sole discretion, determine the level of expenses that they would bear under this provision, in which case Duke will not be obligated to incur additional expenses beyond that level in defense of its Fuel Cost Allowance claim.

8.4.4 Assignment of Recoveries. As part of its assignment of Duke Receivables to the California Parties, as provided in this Agreement, Duke assigns to the California Parties any recoveries of its Fuel Cost Allowance claims from Non-Settling Participants. Nothing in this Section 8.4, however, shall restrict the ability of the California Parties to continue to participate in any existing proceeding, or to initiate or participate in any future proceeding, insofar as such proceeding concerns a Fuel Cost Allowance or Emissions Offset claim made by a supplier other than Duke.

8.5 Limitations on the California Parties' Obligations. Notwithstanding anything else in this Agreement, the obligation of any of the California Parties to pay money:

8.5.1 FERC Proceedings. Shall, as to Non-Settling Participants, be limited to payment of Duke Refunds in the EL00-95 Proceeding or the *Lockyer v. FERC* Remand pursuant to Sections 5.11 (and its subsections) and 8.3, as limited by Section 5.11.7, and shall not encompass payment of claims in any other proceeding; and

8.5.2 Total Refunds Allocated. Shall not, in any event, exceed the total amount of refunds and/or offsets allocated to that California Party pursuant to this Agreement.

8.6 Outside ISO and PX Markets. Without limiting the foregoing Section 8.5, nothing in this Agreement shall require any of the California Parties to bear any liability to any party relating to sales by the Duke Parties outside of the ISO and PX

during the Settlement Period, other than OOM sales by the Duke Parties to CERS during the Post-January 17, 2001 Period.

8.7 Duke Parties Not a Claimant. The Duke Parties agree that they shall not be a claimant for any of the funds to be allocated pursuant to the terms of this Agreement, except as provided in Section 4.1.3.3.

8.8 No Waiver Regarding Issues with Respect to Non-Settling Participants. As to Non-Settling Participants, the Duke Parties and the Settling Participants shall have full rights to contest any issue any such Non-Settling Participant may advocate in any forum and advance any issue as though no settlement occurred; *provided* that no such issue advanced by the Duke Parties shall affect in any way the Duke Parties' rights and obligations with respect to the Settling Participants as set forth herein, and no such issue advanced by the Settling Participants shall affect in any way the Settling Participants' rights and obligations with respect to the Duke Parties as set forth herein.

ARTICLE IX. DISPUTE RESOLUTION

9.1 Dispute Resolution. Except as provided in Section 4.1.3.2, any disputes which, pursuant to any provision of this Agreement, are expressly stated to be subject to dispute resolution proceedings shall be resolved through the following process:

9.1.1 In-Person Meeting. The affected Parties shall first participate in an in-person meeting to attempt to resolve the dispute.

9.1.2 Mediation. If the dispute remains unresolved after the Parties have participated in an in-person meeting, the Parties shall then participate in a non-binding mediation before a neutral mediator mutually agreed upon by the Parties.

9.1.3 Binding Arbitration. If the dispute remains unresolved after the Parties have participated in non-binding mediation, the Parties shall participate in binding arbitration before a single, neutral arbitrator selected from the national panel maintained by the CPR Institute for Dispute Resolution and utilizing the CPR Rules for Non-Administered Arbitration in effect as of the Settlement Effective Date.

ARTICLE X. REQUIRED APPROVALS

10.1 Required Approvals. The settlement made pursuant to this Agreement shall be subject to the approval, without material change or condition unacceptable to any affected Party, (i) by the FERC, (ii) as to SCE, by the CPUC, (iii) as to the reciprocal obligations of Duke and the Local Governmental Parties only, by their governing boards or councils (if necessary), and (iv) as to the reciprocal obligations of Duke and the Class Action Parties only, in the pertinent Court Order ("Required Approvals"). The CPUC's execution of this Agreement as a Party shall constitute its approval of the settlement as to SCE. Should it be determined that the CPUC's approval of this settlement and Agreement must be obtained through a proceeding before the CPUC, SCE shall be

responsible for preparing and submitting such application or other submission to the CPUC as is determined to be necessary.

10.2 FERC Settlement Order. The FERC approval of this Agreement in the Settlement Order shall constitute authorization and direction to the ISO and PX to implement the terms of this Agreement and shall be deemed to include, if necessary, waiver of any tariff provisions that may provide for contrary resolution of the matters covered by this settlement

10.3 Adoption of Findings. The FERC Settlement Order shall incorporate, by specific reference to this Section 10.3, FERC's adoption, other than as to the CPUC and parties that retain claims in the EL00-95 Proceeding, and the California and Egger Classes, the following findings:

10.3.1 Just and Reasonable Rates. The resolution of the claims concerning Duke's transactions for electricity and ancillary services in the PX and ISO markets during the Refund Period effected through this settlement will result in rates charged by and prices paid to Duke for electricity and ancillary services provided by Duke that are just and reasonable within the meaning of the Federal Power Act. The California Parties that consent to this finding do so solely for purposes of settlement, and such finding will not impact or otherwise apply to any challenges any of them assert at FERC or in any other forum concerning any person or entity other than Duke;

10.3.2 Final Resolution of Claims. The implementation of this settlement constitutes a final resolution of the claims released herein asserted against Duke before FERC; and

10.3.3 Fair and Reasonable Resolution of Claims. The settlement provided for by this Agreement is a fair and reasonable resolution of the claims asserted in the course of the various FERC proceedings and which are released in Article VII.

10.4 FERC Jurisdiction. Except as specifically provided in this Agreement, FERC shall continue to exercise jurisdiction over the rates, prices, terms and conditions of the Duke transactions that are the subject of the releases in Article VII and of the implementation of this settlement.

10.5 FERC Application. The application for approval of this Agreement by FERC shall be prepared and submitted jointly by the Parties no later than fifteen (15) days after the Execution Date.

10.6 Duke Claims in PG&E Bankruptcy. Within five (5) days after the Settlement Effective Date, the Duke Parties shall withdraw their claims against PG&E in the PG&E bankruptcy proceeding relating to matters settled in this Agreement.

ARTICLE XI, IMPLEMENTATION OF CLASS ACTION SETTLEMENTS

11.1 Submittal for Notice Order. Class Counsel for the California and Egger Class Plaintiffs shall each submit this Agreement to a pertinent court and shall

each separately apply for entry of an order (the "Notice Order") in their respective cases to be agreed to by Duke and Class Counsel. Plaintiffs in the Wholesale Electricity Antitrust Cases and in Egger shall agree with Duke on the court(s) in which the applications shall be made, and, should jurisdiction over the Wholesale Electricity Antitrust Cases and Egger remain undecided, may further agree that the California Class and/or Egger Class Plaintiffs shall file separate actions against Duke for the purpose of effectuating this Settlement. The Duke Parties shall be responsible for paying the costs of notice to the California Class and to the Egger Class.

11.2 Notice Order. The Notice Order in each of the California Class and Egger Class Cases will request, *inter alia*:

11.2.1 Class Certification. Certification of the pertinent Class for settlement purposes only;

11.2.2 Preliminary Approval. Preliminary approval of the settlement set forth in this Agreement; and

11.2.3 Class Notice. Approval of the dissemination of a settlement notice or notices, in a form to be agreed to by Duke Energy and California Class Counsel, which shall set forth the general terms of the settlement set forth in this Agreement and the date of the Settlement Hearing as described below. Counsel shall propose to the Court that notice be provided by such methods as are agreed to by counsel.

11.3 Settlement Hearing. California and Egger Class Counsel shall each request that after notice is given, the Court(s) hold hearing(s) (the "Settlement Hearings") in which the settlement with the applicable of Classes as set forth herein shall be approved as fair, adequate and reasonable, and enter final judgment of dismissal with prejudice pursuant to the settlement as to Duke.

11.4 Requests for Exclusion. If prior to the Settlement Hearing in either or both of the California and Egger Class Actions, persons who otherwise would be members of either Class have timely requested exclusion ("Requests for Exclusion") from their respective Class in accordance with the provisions of the applicable Notice Order and the notice given pursuant thereto, and such persons in either Class in the aggregate represent claims in an amount greater than an amount acceptable to Duke, then Duke shall have, in its sole and absolute discretion, the option to terminate this Agreement as to that Class. Copies of all Requests for Exclusion received, together with copies of all written revocations of Requests for Exclusion received shall be delivered to Duke's counsel within seven (7) Business Days before the applicable Settlement Hearing. Termination by Duke under this Section 11.4 shall in no manner affect Duke's settlement with the California Parties, the Other Claimant Parties and any Additional Settling Participant.

11.5 No Solicitation. California and Egger Class counsel will neither solicit nor encourage members of either Class to request exclusion.

11.6 Certification or Termination. Solely for the purposes of the settlement of the California and Egger Cases, the Duke Parties and the California and

Egger Classes agree to the certification of the California and Egger Classes as defined above; and Class Counsel and Duke agree to request jointly that the Court in each case enter an order, which, among other things, certifies the applicable Class. In the event that this Agreement is not finally approved, or is terminated, canceled, or fails to become effective for any reason, any class certification, solely for the purpose of the settlement of the California and/or Egger Cases, shall be null and void and the plaintiffs in those actions and Duke shall revert to their respective positions immediately prior to the execution of this Agreement. Under no circumstances may this Agreement be used as an admission or evidence concerning the appropriateness of class certification should the Agreement be terminated in whole or part. Duke reserves the right to oppose class certification should this Agreement be terminated in whole or part. Termination by Duke under this Section 11.6, or any other failure of this agreement to become effective as to the California and/or Egger Classes shall in no manner affect Duke's settlement with the California Parties, the Other Claimant Parties and any Additional Settling Participant.

11.7 Attorneys' Fees and Costs. Counsel for the California Class Plaintiffs may apply to the appropriate court for an award of attorneys' fees and reimbursement of expenses of up to \$6 million, and counsel for the Egger Class Plaintiffs may apply to the appropriate court for an award of attorneys' fees and reimbursement of expenses up to \$1 million, which applications shall not be opposed by the Duke Parties. The Duke Parties shall pay any amounts so awarded within ten (10) business days of the entry of the applicable order awarding attorneys' fees and expenses. Should less than \$6 million in attorneys' fees and expenses be awarded to counsel for the California Class Plaintiffs, the difference between \$6 million and the sum awarded shall be deposited by the Duke Parties into the California Litigation Escrow. Should less than \$1 million in attorneys' fees and expenses be awarded to counsel for the Egger Class Plaintiffs, the difference between \$1 million and the sum awarded shall be deposited by the Duke Parties into the Duke Refund Escrow.

ARTICLE XII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

12.1 Representations of all Parties and Settling Participants. Each Party (except for the Class Action Parties, as to whom this Agreement is subject to court approval and the Local Governmental Parties, as to which governing board or council approval of this Agreement may be necessary) and Additional Settling Participant makes the following representations and warranties, for itself only, to each other Party and Additional Settling Participant, to be effective from and after (i) for the Parties, the Execution Date and (ii) for Additional Settling Participants, the date of opt-in pursuant to Section 8.1:

12.1.1 Organizational Status, Power and Authority. Except for governmental parties, it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. It possesses all necessary power and authority to execute, deliver and perform its obligations under this Agreement.

12.1.2 Authority to Execute. If applicable, the execution, delivery, election to participate and performance of this Agreement (i) are within its powers, (ii)

have been duly authorized by all necessary action on its behalf and all necessary consents or approvals have been obtained and are in full force and effect, and (iii) do not violate any of the terms and conditions of any applicable law, or materially violate any contracts to which it is a party.

12.1.3 Binding Obligation. This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

12.1.4 Ownership of Claims. It is the sole owner of the civil and FERC claims which are being resolved and compromised by it pursuant to this Agreement. Except as provided in this Agreement, there has been no sale, assignment, transfer, pledge or hypothecation, or attempted sale, assignment, transfer, pledge or hypothecation, by it of any such rights or claims, whether directly, indirectly, by operation of law or otherwise.

12.2 Representations of the Duke Parties. The Duke Parties jointly and severally represent and warrant to the California Parties that the exact legal name and the states in which they were organized are accurately set forth in the definition of Duke Parties in Section 1.28:

12.3 Understanding of Terms. In executing this Agreement, or, with respect to Additional Settling Participants, in electing to participate in this Agreement:

12.3.1 Each Party acknowledges that it has relied on its own independent investigation and conducted its own due diligence with respect to the subject matter of this Agreement and in determining whether or not to enter into this Agreement, including a review of the underlying contracts, agreements, transactions, instruments and applicable law in connection herewith, or has been afforded an opportunity to review relevant information, ask questions and receive satisfactory answers concerning this settlement and the terms and conditions of this Agreement;

12.3.2 Each Party and each Additional Settling Participant acknowledges it is experienced in or had the opportunity to consult with experts who are experienced in wholesale and retail electric and gas commodity, risk management and other transactions and possesses the knowledge, experience and sophistication to allow it to fully evaluate and accept the merits and risks of entering into the transactions contemplated by this Agreement; and

12.3.3 Each Party recognizes that the Duke Parties made available information and analysis to support their valuation regarding refunds and receivables.

12.4 Covenants. The Duke Parties covenant to the California Parties that:

12.4.1 At all times between the Execution Date and the Settlement Effective Date, they will not sell, assign, transfer, pledge, hypothecate, encumber, or otherwise transfer in whole or in part to any third party, whether voluntarily or involuntarily or by way of setoff or offset, any of the Duke Receivables;

12.4.2 At all times from and after the Execution Date, the Duke Parties will provide to the California Parties within forty-five (45) days after any change in their name or jurisdiction of organization, written notice of such change;

12.4.3 At all times from and after the Settlement Effective Date, the Duke Parties will, upon the reasonable request and at the sole expense of the California Parties, execute and/or deliver such further documents, agreements, instruments, and account and other books of record, and shall cooperate and do such other and further acts, as may be necessary to effectuate the Duke Parties' transfer of the Duke Receivables pursuant to Section 4.1.1.6, and enforce the claims, rights of action and defenses of the Duke Parties acquired in connection therewith.

ARTICLE XIII. MISCELLANEOUS

13.1 Notices. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given: (i) when personally delivered; (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first Business Day thereafter, if transmitted by facsimile or telecopier with confirmation of receipt; (iii) on the date of receipt when mailed by certified mail, return receipt requested, postage prepaid; or (iv) on the first Business Day thereafter when sent by overnight courier; in each case, to the addresses set forth in Section 13.2, or to such other addresses as a Party may from time to time specify by notice to the other Parties given pursuant hereto.

13.2 Notice to Parties. Notices required under this Agreement shall be delivered to:

If to the Duke Parties:

Keith L. Head

Duke Energy Americas, LLC
5400 Westheimer Court
Houston, TX 77056-5310
Telephone: (713) 627-6520
Fax: (713) 627-5681
E-Mail: klhead@duke-energy.com

With a Copy to:

Mark L. Perlis
Joel B. Kleinman
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526
Telephone: (202) 785-9700

Fax: (202) 887-0689
E-Mail: perlism@dsmo.com
kleinmanj@dsmo.com

If to PG&E:

Joshua Bar-Lev

Physical address:
PG&E Corporation Legal Department
77 Beale Street
San Francisco, CA 94120

Mailing address:

Mail Code B30A
P.O. Box 7442
San Francisco, CA 94120-7442
Telephone: (415) 973-4507
Fax: (415) 973-5520
E-Mail: jxb7@pge.com

With a copy to:

Stan Berman
Heller, Ehrman, White & McAuliffe
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7098
Telephone: (206) 389-4276
Fax: (206) 515-8927
E-Mail: sberman@hewm.com

If to SCE:

Russell Swartz
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Telephone: (626) 302-3925
Fax: (626) 302-1904
E-Mail: russell.swartz@sce.com

With a copy to:

Richard Roberts
Steptoe & Johnson LLC
1330 Connecticut Avenue, N.W.

Washington, D.C. 20036-1795
Telephone: (202) 429-6756
Fax: (202) 429-3902
E-Mail: RRoberts@Steptoe.com

If to SDG&E:

Don Garber
San Diego Gas & Electric Company
101 Ash Street
San Diego, CA 92101-3017
Telephone: (619) 699-5027
Fax: (619) 696-4539
E-Mail: dgarber@sempa.com

With a copy to:

Nicholas W. Fels
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-5648
Fax: (202) 662-6291
E-Mail: nfels@cov.com

If to OMOI:

Robert Pease
Office of Market Oversight and Investigations
Federal Energy Regulatory Commission
888 1st Street, NE
Washington, D.C. 20426
Telephone: (202) 502-8131
Fax: (202) 208-0057
E-Mail: Robert.Pease@ferc.gov

With a copy to:

Lee Ann Watson
Office of Market Oversight and Investigations
Federal Energy Regulatory Commission
888 1st Street, NE
Washington, D.C. 20426
Telephone: (202) 502-6317
Fax: (202) 208-0057
E-Mail: LeeAnn.Watson@ferc.gov

If to CERS:

Peter S. Garris
Deputy Director
California Department of Water Resources
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821
Telephone: (916) 574-2733
Fax: (916) 574-0301
E-Mail: pgarris@water.ca.gov

With a copy to:

Office of the Chief Counsel
1416 Ninth Street, Room 1118
Sacramento, CA 95814
Telephone: (916) 653-7084
Fax: (916) 654-9822
E-Mail: pbernard@water.ca.gov

If to CEOB:

Erik Saltmarsh
California Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
Telephone: (916) 322-8601
Fax: (916) 322-8591
E-Mail: esaltmarsh@eob.ca.gov

If to CPUC:

Sean Gallagher
California Public Utilities Commission
Legal Division, Room 5124
505 Van Ness Avenue
San Francisco 94102
Telephone: (415) 703-2059
Fax: (415) 703-2262
E-Mail: shg@cpuc.ca.gov

If to California Attorney General:

Ken Alex
Supervising Deputy Attorney General
P.O. Box 70550
1515 Clay St., 20th Fl.
Oakland, CA 94612-0550
Telephone: (510) 622-2137
Fax: (510) 622-2270
E-Mail: ken.alex@doj.ca.gov

If to the Local Governmental Parties:

Frank J. Janeczek Jr.
Lerach Coughlin Stoia Gellar Rudman & Robbins LLP
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 231-1058
Fax: (619) 231-7423
E-Mail: fjaneczek@lerachlaw.com

With a Copy to:

Robert J. Hanna
Best Best & Kreiger LLP
402 West Broadway, 13th Floor
San Diego, CA 92101-3542
Telephone: (619) 525-1300
Fax: (619) 233-6118
E-Mail: robert.hanna@bbklaw.com

If to the California Class:

Barry R. Himmelstein
Lief, Cabraser, Heimann & Bernstein LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-5238
Telephone: (415) 956-1000
Fax: (415) 956-1008
E-Mail: bhimmelstein@lchb.com

With a Copy to:

Frank J. Janeczek Jr.
Lerach Coughlin Stoia Gellar Rudman & Robbins LLP
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 231-1058
Fax: (619) 231-7423
E-Mail: fjaneczek@lerachlaw.com

If to Egger Class:

Matthew J. Zevin, Esq.
Stanley, Mandel & Iola, LLP
550 West "C" Street, Suite 1600
San Diego, CA 92101
(619) 235-5306
(815) 377-8419

13.3 Effect of Subsequent FERC Orders and Appeals. If, as a result of a FERC order on rehearing, reconsideration, or remand, or an order by a court of appeals, the FERC Interest Determination, FERC Allowances Determination, FERC Receivables Determination, or FERC Refund Determination is changed in a way that changes the calculation of amounts paid under this Agreement to or by any Settling Participants, then the amounts paid to or from each such Settling Participant shall be subject to true-up among such Settling Participants, by way of refund or surcharge, with interest at the FERC Interest Rate or such other rate as FERC may determine to be applicable, to incorporate the change from such prior FERC determination into the calculation of the amounts paid by or to Settling Participants under this Agreement. No such true-up shall affect or apply to Duke beyond the Distributable Rerun Shortfall. Distributions of refunds and Deemed Distributions to Settling Participants will not be affected by the FERC Receivables Determination or FERC Refunds Determination

13.4 Governing Law. To the extent not governed by federal law, this agreement and the rights and duties of the Parties and the Additional Settling Participants hereunder will be governed by and construed, enforced and performed in accordance with the law of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

13.5 Entire Agreement. This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties other than those set forth or referred to herein, except that the currently in place tolling of time limitations, as defined in Section 7.10, shall remain in effect notwithstanding the termination of any prior agreement among the Parties, or any of them.

13.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

13.7 Costs. Except as provided in this Agreement, each of the Parties shall pay its own costs and expenses, including attorneys' fees, incurred in connection with the disputes that are settled herein and the negotiation and preparation of this Agreement and its implementation, including but not limited to costs and expenses incurred in preparing stipulations, making motions, and seeking the Required Approvals.

13.8 Execution. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission, which shall be deemed the same as an original signature.

13.9 Modifications. This Agreement may be modified only if in writing and signed by each of the Parties affected by the proposed modification. No waiver of any provision of this Agreement or departure from any term of this Agreement shall be effective unless in writing and signed by the California Parties with respect to any waiver requested by the Duke Parties, and by the Duke Parties with respect to any waiver requested by the California Parties. No modification will be effective absent approval of

FERC, except that the Parties may agree to, and make, modifications to this Agreement after it is filed at FERC and pending FERC approval of the Agreement; provided, however, that the Parties shall supplement any filing made to FERC seeking approval of this Agreement with a revised Agreement showing and explaining the modifications.

13.10 Assignment. No Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Parties; provided, however, that any Party may, without the consent of the other Parties (and without relieving itself from liability hereunder), transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, in which case the assignee shall agree in writing to be bound by the terms and conditions hereof.

13.11 Interpretation.

13.11.1 Singular; Plural. Defined terms used in this Agreement (including defined terms incorporated by reference) shall include in the singular number the plural and in the plural number the singular.

13.11.2 Self Reference; Incorporation by Reference; Cross Reference. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement (including terms and provisions incorporated by reference) shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement, and all references to Articles or Sections of this Agreement shall be to all subparts of such Articles or Sections. Exhibits and Schedules to this Agreement shall be deemed incorporated by reference in this Agreement.

13.11.3 Inclusive of Permitted Successors. Unless otherwise stated, any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

13.11.4 Gender. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.

13.11.5 Inclusive References. The words "include," "includes" and "including" shall not be limiting, and shall be deemed in all instances to be followed by the phrase "without limitation".

13.11.6 Days; Time of Day. References to "days" shall mean calendar days, unless otherwise indicated and references to the time of day shall mean such time in Sacramento, California, unless otherwise expressly specified.

13.11.7 Ambiguities Neutrally Construed. This Agreement is the result of negotiations among, and has been reviewed by each Party and its respective counsel. Accordingly, this Agreement shall be deemed to be the product of each Party, and no ambiguity shall be construed in favor of or against any Party.

13.11.8 Grammatical Forms. Other grammatical forms of defined words or phrases have corresponding meanings.

13.11.9 Scope of Writing References. Reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

13.11.10 Consents; Acceptance; etc. Unless otherwise expressly provided herein any consent, acceptance, satisfaction, cooperation or approval required of a Party under this Agreement shall not be unreasonably withheld or delayed.

13.11.11 Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement.

13.12 No Joint and Several Liability. Nothing herein shall create any joint or several liability among the California Parties. Further, Duke Energy Corporation shall not be liable for the payment of any monetary consideration, as provided in Article IV, and such consideration shall instead be the joint and several responsibility of the other Duke Parties.

[SIGNATURES APPEAR ON NEXT PAGE]

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as original.

Duke Energy Corporation Name: <u>Martha B. Wyrsh</u> Title: Group Vice President, General Counsel and Secretary Date: <u>September 28, 2004</u>	Duke Capital LLC / Name: <u>David L. Hauser</u> <i>MBW</i> Title: President Date: <u>September 28, 2004</u>
Duke Energy Americas, LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>	Duke Energy North America, LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>
Duke Energy Merchants, LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>	Duke Energy Trading and Marketing, LLC Name: <u>Larry A. Wall</u> Title: President Date: <u>September 28, 2004</u>
Duke Energy Morro Bay LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>	Duke Energy Moss Landing LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>
Duke Energy Oakland LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>	Duke Energy South Bay, LLC Name: <u>Lindsay A. Hall</u> Title: Chief Financial Officer Date: <u>September 28, 2004</u>

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

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DEMI Management, Inc. _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>	DE Power Generating, LLC _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>
Duke Energy California, LLC _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>	Duke Energy Generation Services, LLC _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>
Duke Energy Fossil-Hydro, LLC _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>	Duke Energy Fossil-Hydro California, Inc. _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>
	Catawba River Investments II, LLC _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>
DE Power Generating Holdings, LLC _____ Name: Lindsay A. Hall Title: Chief Financial Officer Date: <u>September 28, 2004</u>	

KLH

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

Pacific Gas and Electric Company Name: <u>Roger J. Peters</u> Title: <u>Senior Vice President and General Counsel</u> Dated: <u>9/28/04</u>	Southern California Edison Company Name: _____ Title: _____ Dated: _____
San Diego Gas & Electric Company Name: _____ Title: _____ Dated: _____	The People of the State of California, <i>ex rel.</i> Bill Lockyer, Attorney General Name: _____ Title: _____ Dated: _____
The California Department of Water Resources acting solely under the authority and powers created by AB1-X, codified in Sections 80000 through 80270 thereof, and not under its powers and responsibilities with respect to the State Water Resources Development System Name: _____ Title: _____ Dated: _____	The California Electricity Oversight Board Name: _____ Title: _____ Dated: _____
The California Public Utilities Commission Name: _____ Title: _____ Dated: _____	The San Diego District Attorney's Office Name: _____ Title: _____ Dated: _____

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

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Attorney General of the State of Washington in his capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law	Attorney General of the State of Oregon in his capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law
Name:	Name: <u>CAROL POWLES</u>
Title:	Title: <u>ASST. ATTORNEY GENERAL</u>
Dated:	Dated: <u>September 27, 2004</u>
Federal Energy Regulatory Commission Office of Market Oversight and Investigations	
Name:	
Title:	
Dated:	

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

EGGER CLASS	CALIFORNIA CLASS
	Lerach Coughlin Stoia Geller Goodman & Robbins LLP
Name:	Name: Frank J. Janacek, Jr.
Title:	Title: Counsel for Class Representative Ruth Hendricks, Class Counsel for the proposed Class and Liason Counsel in Wholesale Electricity Cases I & II
Dated: _____	Dated: <u>9/27/04</u>
	Lieff, Cabraser, Heimann & Bernstein LLP
	Name: Barry R. Himmelstein
	Title: Counsel for Class Representative Oscar's Photo Lab and Class Counsel for the proposed Class
	Dated: _____
	Krause & Kalfayan
	Name: Ralph Kalfayan
	Title: Counsel for Class Representative Pamela Gordon and for the proposed Class
	Dated: <u>9/27/04</u>

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

CITY AND COUNTY OF SAN FRANCISCO	VISTA IRRIGATION DISTRICT
Name: Dennis J. Herrera Title: San Francisco City Attorney Dated: _____	Name: C. Michael Cowett Title: Special Counsel Dated: <u>9/27/04</u>
CITY OF OAKLAND	YUIMA MUNICIPAL WATER DISTRICT
Name: John A. Russo Title: Oakland City Attorney Dated: _____	Name: C. Michael Cowett Title: Special Counsel Dated: <u>9/27/04</u>
COUNTY OF SANTA CLARA	FALLBROOK PUBLIC UTILITY DISTRICT
Name: Peter A. McHugh Title: Chair Dated: _____	Name: C. Michael Cowett Title: Special Counsel Dated: <u>9/27/04</u>
COUNTY OF CONTRA COSTA	BORRERO WATER DISTRICT
Name: Silvano B. Marchesi Title: County Counsel Dated: _____	Name: C. Michael Cowett Title: Special Counsel Dated: <u>9/27/04</u>

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
SEPTEMBER 27, 2004

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

VALLEY CENTER MUNICIPAL WATER DISTRICT	METROPOLITAN TRANSIT DEVELOPMENT BOARD
Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>	Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>
PADRE DAM MUNICIPAL WATER DISTRICT	SAN DIEGO TROLLEY, INC.
Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>	Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>
RAMONA MUNICIPAL WATER DISTRICT	SAN DIEGO TRANSIT CORPORATION
Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>	Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>
HELIX WATER DISTRICT	SWEETWATER AUTHORITY
Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>	Name: <u>C. Michael Cowett</u> Title: <u>Special Counsel</u> Dated: <u>9/27/04</u>

EXHIBIT A

Allocation Matrix
(see following sheet)

EXHIBIT B

NET PAYERS

California Department of Water Resources
Calpine Energy Services, LP
City of Vernon
Coral Power, LLC
Dynegy Power Marketing, Inc.
Idaho Power Company
Northern California Power Agency
PacifiCorp
Western Area Power Administration (WAPA/WAMP)
Williams Energy Marketing and Trading

EXHIBIT C

PARTICIPANTS THAT WOULD QUALIFY AS DEEMED DISTRIBUTION PARTICIPANTS

Pacific Gas and Electric Company
British Columbia Power Exchange Corporation
Sempra Energy Trading Corporation
Enron Power Marketing, Inc.
Puget Sound Energy
El Paso Power Services Company
Idaho Power Company
City of Pasadena
Transalta Energy Marketing Inc.
Constellation Power Source Inc.
Automated Power Exchange
PECO Energy Company
Western Area Power Admin.-Redding